

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(1) THE LEGISLATION/(i) The Limitation Acts/901. Outline of the legislation.

LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)

1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS

(1) THE LEGISLATION

(i) The Limitation Acts

901. Outline of the legislation.

For most claims, periods of limitation are prescribed by statute with the consequence that a claim begun after the period of limitation has expired is not maintainable¹. The relevant limitation period is satisfied by the issue of a claim form, which must be served within the period set out in the Civil Procedure Rules (the 'CPR')².

The statutes which impose periods of limitation for classes of claim are called statutes of limitation³. The principal statutes of limitation in force at the present time are (1) the Limitation Act 1980⁴; (2) the Foreign Limitation Periods Act 1984⁵; and (3) the Limitation (Enemies and War Prisoners) Act 1945⁶, all with subsequent amendments. The Limitation Act 1980 is substantially amended by, in particular, the Latent Damage Act 1986⁷, the Consumer Protection Act 1987⁸, the Defamation Act 1996⁹, the Arbitration Act 1996¹⁰, the Commonhold and Leasehold Reform Act 2002¹¹ and the Proceeds of Crime Act 2002¹² which each set limitation periods for classes of claim within their specific fields. Additionally, the Land Registration Act 2002 has introduced a fundamental change in the method by which an adverse possessor can acquire the title to registered land¹³.

In the Limitation (Enemies and War Prisoners) Act 1945, 'statute of limitation' means, in addition to the Limitation Act 1980, a number of other enactments¹⁴, but it is doubtful whether these enactments would all be regarded as statutes of limitation except for the purposes of the Act which so defines them¹⁵.

All statutes of limitation are analogous and should receive a uniform construction; they are beneficial statutes, and are to be construed liberally and not strictly¹⁶. Besides the general statutes relating to limitation periods there are special statutes fixing periods of limitations in particular cases¹⁷.

The Law Commission has recommended a fundamental reconsideration of the law on limitation periods, comprising a primary limitation period of three years and a longstop limitation period of ten years, which would apply to most claims in contract and tort, claims in restitution or for breach of trust and claims on a statute, a judgment or an arbitration award, and would apply with modifications to personal injury claims and certain other claims. During the claimant's minority the Commission recommends that the initial limitation period should not run, but that the longstop limitation period should do so, providing that it does not bar a claim before the claimant reaches the age of 21. The Commission further recommends that adult disability (including supervening disability) should suspend the initial limitation period, but should not affect the longstop limitation period¹⁸. At the date at which this volume states the law, these recommendations, and the draft bill embodying them, had not been adopted.

1 Except in relation to land, chattels and defective products (see PARAS 940-941) the expiry of the limitation period serves only to bar the remedy and not to extinguish the right of action. A limitation period will only operate once raised as a defence by the defendant: see PARA 942. The limitation of civil proceedings has been described as entirely statutory and a claim will be barred only if there is some period of limitation applicable to it under the statute: *Collin v Duke of Westminster* [1985] QB 581 at 600, [1985] 1 All ER 463 at 471, CA, per Oliver J. See also *Bray v Stuart A West & Co* [1989] NLJR 753; and *Halls v O'Dell* [1992] QB 393, [1992] 2 WLR 308, CA.

2 See PARA 920.

3 *Gregory v Torquay Corpn* [1911] 2 KB 556 at 559, DC (affd [1912] 1 KB 442, CA); *The Llandoverly Castle* [1920] P 119 at 124. It is possible that the term 'statute of limitation' should be applied only to an Act which imposes a time limit for the enforcement of an existing cause of action, as distinct from an Act which creates a fresh cause of action and also imposes a time limit for its enforcement: see *Gregory v Torquay Corpn* at 559, 561. Both forms of Act are considered in this title. As to the meaning of 'period of limitation' see *Airey v Airey* [1958] 2 QB 300, [1958] 2 All ER 571, CA.

4 The Limitation Act 1980 came into force on 1 May 1981 and is a consolidating measure, which repealed and replaced the whole of the Limitation Act 1939, the Limitation Act 1975, parts of the Limitation Act 1963 and the Limitation Amendment Act 1980. Cases decided under earlier legislation are no longer necessarily applicable.

5 See PARA 1235 et seq. See also the Contracts (Applicable Law) Act 1990; the Private International Law (Miscellaneous Provisions) Act 1995; and PARA 1238.

6 See PARAS 1232-1234.

7 See PARA 982.

8 See PARAS 1003-1004.

9 See PARA 996-997.

10 See PARA 917.

11 See PARA 1015.

12 See PARAS 1013-1014.

13 See PARA 1017 et seq.

14 See the Limitation (Enemies and War Prisoners) Act 1945 s 2(1). The enactments in question are specified in PARA 1232 note 1.

15 See note 3.

16 *Murray v East India Co* (1821) 5 B & Ald 204 at 215; *Doe d Duroure v Jones* (1791) 4 Term Rep 300 at 308; *Tolson v Kaye* (1822) 3 Brod & Bing 217 at 227; *A'Court v Cross* (1825) 3 Bing 329 at 332; *King v Walker* (1761) 1 Wm Bl 286; *Lafond v Ruddock* (1853) 13 CB 813 at 820; *Scales v Jacob* (1826) 3 Bing 638 at 645; *Perry v Jackson* (1792) 4 Term Rep 516 at 519.

17 See PARA 908 et seq.

18 See *Limitation of Actions* (Law Com no 270) (2001), executive summary.

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902. Commencement of Acts and transitional provisions.

The Limitation Act 1980 came into operation on 1 May 1981¹, and applies, subject to certain exceptions², to all claims³ sought to be begun within the jurisdiction of the English courts, and all arbitrations sought to be commenced⁴, on or after that date.

Nothing in the Limitation Act 1980 enables any claim to be brought which was previously barred by that Act or the preceding limitation statute, nor does it affect any claim or arbitration previously commenced or the title to any property which was the subject of any such claim or arbitration⁵.

The Limitation (Enemies and War Prisoners) Act 1945 is deemed to have had effect as from 3 September 1939⁶. The Foreign Limitation Periods Act 1984 came into force on 1 October 1985⁷. The Latent Damage Act 1986 came into force on 18 September 1986⁸, the Consumer Protection Act 1987 on 1 March 1988⁹, the relevant provisions of the Defamation Act 1996 on 4 September 1996¹⁰ and the Arbitration Act 1996 (in so far as it affects limitation periods) on 31 January 1997¹¹. The relevant provisions of the Commonhold and Leasehold Reform Act 2002 came into force on 27 September 2004¹², those of the Proceeds of Crime Act 2002 on 24 February 2003¹³ and those of the Land Registration Act 2002 on 13 October 2003¹⁴.

1 Limitation Act 1980 s 41(2), (3); Limitation Act 1980 (Commencement) Order 1981, SI 1981/588.

2 For proceedings to which the Limitation Act 1980 does not apply see ss 37, 39; and PARAS 918-919.

3 As to the meaning of 'claim' for this purpose, and for proceedings to which the Limitation Act 1980 applies, see s 38; and PARAS 915-917.

4 As to the application of the Limitation Act 1980 to arbitrations see the Arbitration Act 1996 s 13; PARA 917; and **ARBITRATION** vol 2 (2008) PARA 1220.

5 See the Limitation Act 1980 Sch 2 para 9(1)(a), (b). As to the relevant dates for operation of a previous limitation bar and commencement of a previous claim or arbitration see Sch 2 para 9(2). See also *Arnold v Central Electricity Generating Board* [1988] AC 228, [1987] 3 All ER 694, HL; *McDonnell v Congregation of Christian Brothers Trustees (formerly Irish Christian Brothers)* [2003] UKHL 63, [2004] 1 AC 1101, [2004] 1 All ER 641. The effect of a subsequent legislative lengthening of an expired limitation period was considered by the Privy Council in *Yew Bon Tew v Kenderaan Bas Mara* [1983] 1 AC 553, [1982] 3 All ER 833, PC, where it was held that a limitation defence is an accrued right in the defendant, whereby he might assume that he is no longer at risk and act accordingly.

6 Limitation (Enemies and War Prisoners) Act 1945 s 6(2) (repealed).

7 Foreign Limitation Periods Act 1984 s 7(2); Foreign Limitation Periods Act 1984 (Commencement) Order 1985, SI 1985/1276. The 1984 Act applies to all claims commenced on or after 1 October 1985, notwithstanding that the cause of action accrued before that date: see *Jones v Trollope Colls Cementation Overseas Ltd* (1990) Times, 26 January, CA (foreign one-year limitation period prima facie applicable to claimant's claim for damages for personal injuries notwithstanding that, at date of accrual of cause of action, the 1984 Act was not in force and the court would have applied the three-year limitation period laid down by the Limitation Act 1980 s 11). See also PARAS 1232-1234.

8 See the Latent Damage Act 1986 s 5(3); and PARA 982.

9 See the Consumer Protection Act 1987 s 50; the Consumer Protection Act 1987 (Commencement No 1) Order 1987, SI 1987/1680; and PARAS 1003-1004.

10 See the Defamation Act 1996 s 19(2), commencing ss 5, 6; and PARAS 996-997.

11 See the Arbitration Act 1996 s 109; the Arbitration Act 1996 (Commencement No 1) Order 1996, SI 1996/3146; and PARA 917.

12 See the Commonhold and Leasehold Reform Act 2002 s 181; the Commonhold and Leasehold Reform Act 2002 (Commencement No 4) Order 2004, SI 2004/1832, art 2; and PARA 1015.

13 See the Proceeds of Crime Act 2002 s 458; the Proceeds of Crime Act 2002 (Commencement No 4, Transitional Provisions and Savings) Order 2003, SI 2003/120, art 2(1), Schedule; and PARAS 1013-1014.

14 See the Land Registration Act 2002 s 136(2); the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2; and PARA 1017 et seq.

UPDATE

902 Commencement of Acts and transitional provisions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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903. Proceedings by or against the Crown.

The Limitation Act 1980 applies in general to proceedings by or against the Crown in like manner as it applies to proceedings between subjects¹. The Act does not, however, apply to any proceedings by the Crown for the recovery of any tax or duty or interest on any tax or duty², or to any forfeiture proceedings under the customs and excise Acts³, or to any proceedings in respect of the forfeiture of a ship⁴.

Special periods of limitation are prescribed for claims by the Crown to recover land⁵.

Proceedings by or against the Crown include proceedings by or against (1) Her Majesty in right of the Duchy of Lancaster; (2) any government department (or any officer of, or person⁶ acting on behalf of, the Crown); and (3) the Duke of Cornwall⁷. The prerogative right of Her Majesty (whether in right of the Crown or of the Duchy of Lancaster) or of the Duke of Cornwall to any gold or silver mine is not affected by the provisions of the Limitation Act 1980⁸.

The Limitation (Enemies and War Prisoners) Act 1945 applies to proceedings to which the Crown is a party⁹, as does the Foreign Limitation Periods Act 1984¹⁰.

1 Limitation Act 1980 s 37(1). This provision is without prejudice to s 39: see s 37(1); and PARA 918. The old rule that time never runs against the Crown (see *Lord Sheffeld v Ratcliffe* (1615) Hob 334 at 347, Ex Ch) would prevail in any case not covered by statute (*Re J (A Person of Unsound Mind)* [1909] 1 Ch 574, CA). As to proceedings by and against the Crown see generally the Crown Proceedings Act 1947. The Crown is entitled to acquire title to land by adverse possession: *Roberts v Crown Estate Comrs* [2008] EWCA Civ 98, [2008] 2 P & CR 1, [2008] All ER (D) 286 (Feb).

2 Limitation Act 1980 s 37(2)(a). As to recovery of tax see **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARAS 437-444; **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 300-303; **INHERITANCE TAXATION** vol 24 (Reissue) PARA 655 et seq (inheritance tax); **INCOME TAXATION** vol 23(2) (Reissue) PARA 1814 et seq (income and corporation tax); and see also PARA 1231. 'Duty' includes any debt due to Her Majesty under the Tithe Act 1936 s 16 (repealed): see the Limitation Act 1980 s 37(2). As to tithes generally see PARA 1018 note 1.

3 Limitation Act 1980 s 37(2)(b). The customs and excise Acts here referred to are (1) the Customs and Excise Management Act 1979; (2) the Customs and Excise Duties (General Reliefs) Act 1979; (3) the Alcoholic Liquor Duties Act 1979; (4) the Hydrocarbon Oil Duties Act 1979; (5) the Tobacco Products Duty Act 1979; and (6) any other enactment for the time being in force relating to customs or excise: Customs and Excise Management Act 1979 s 1(1) (definition amended by the Finance (No 2) Act 1992 s 82, Sch 18 Pt II; and applied by the Limitation Act 1980 s 37(2)(b)). As to forfeiture under the 1979 Act see s 139 et seq, Sch 3; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1155 et seq. As to the time limit for the commencement of proceedings for customs and excise offences see generally the Customs and Excise Management Act 1979 s 146A; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1198.

4 Limitation Act 1980 s 37(2)(c). 'Ship' includes every description of vessel used in navigation not propelled by oars: see s 37(2). As to the forfeiture of ships otherwise than for revenue offences see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARAS 135-138, 253 et seq; **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 415.

5 See the Limitation Act 1980 s 15(7), Sch 1 Pt II paras 10-13; and PARAS 1026-1028; the Land Registration Act 2002 Sch 6 para 13; and PARA 1031.

6 'Person' includes a body of persons corporate or unincorporate: Interpretation Act 1978 s 5, Sch 1.

7 Limitation Act 1980 s 37(3). In the case of claims for the recovery of land, references to the Crown include references to Her Majesty in right of the Duchy of Lancaster and references to the Duke of Cornwall: see s 37(4); and PARA 1026.

8 See the Limitation Act 1980 s 37(6).

9 Limitation (Enemies and War Prisoners) Act 1945 s 3. Proceedings to which Her Majesty is a party in right of the Duchy of Lancaster and proceedings in respect of property belonging to the Duchy of Cornwall are included: s 3. See also PARA 1232.

10 Foreign Limitation Periods Act 1984 s 6(1). For the purposes of s 6, references to a claim or proceedings by or against the Crown include references to those by or against (1) Her Majesty in right of the Duchy of Lancaster; (2) any government department, officer of, or person acting on behalf of, the Crown; and (3) the Duke of Cornwall: s 6(2). See further PARA 1235 et seq.

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904. Proceedings against public authorities.

Since 4 June 1954¹ the periods of limitation applicable to claims against public authorities are the same as those applicable to similar claims against private persons².

¹ This was the date on which the Law Reform (Limitation of Actions etc) Act 1954 (repealed) received the royal assent.

² This is the effect of the repeals effected by the Law Reform (Limitation of Actions etc) Act 1954 ss 1, 8(3), Schedule (repealed).

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905. Policy of the Limitation Acts.

The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them¹; (2) that a defendant might have lost the evidence to disprove a stale claim²; and (3) that persons with good causes of action who are able to enforce them should pursue them with reasonable diligence³.

The Limitation Act 1980 is intended to provide a complete code, including the circumstances in which it is unconscionable for a defendant to seek to invoke limitation, and it is not open to the courts to seek to circumvent the effect of the 1980 Act by adding fresh grounds⁴.

1 See *A'Court v Cross* (1825) 3 Bing 329 at 332-333 per Best CJ; *RB Policies at Lloyd's v Butler* [1950] 1 KB 76 at 81-82, [1949] 2 All ER 226 at 229-230 per Streatfield J.

2 See *Jones v Bellgrove Properties Ltd* [1949] 2 KB 700 at 704, CA, per Lord Goddard CJ; *Donovan v Gwentys Ltd* [1990] 1 All ER 1018 at 1024, [1990] 1 WLR 472 at 479, HL, per Lord Griffiths; *Dobbie v Medway Health Authority* [1994] 4 All ER 450 at 454, [1994] 1 WLR 1234 at 1238, CA, per Sir Thomas Bingham MR.

3 See *Board of Trade v Cayzer, Irvine & Co* [1927] AC 610 at 628, HL, per Lord Atkinson. This is really the view of equity; cf the maxim 'equity aids the vigilant, not the indolent' (*vigilantibus et non dormientibus lex succurrit*); and **EQUITY** 16(2) (Reissue) PARA 910 et seq. The dictum of Lord Atkinson at 628 does not, however, constitute a rule of interpretation and is not to be taken to mean that a limitation period does not apply to any person who has a good cause of action but is unable to enforce it: see *Chagos Islanders v A-G* [2003] EWHC 2222 (QB), (2003) Times, 10 October, [2003] All ER (D) 166 (Oct); affd [2004] EWCA Civ 997, (2004) Times, 21 September, [2004] All ER (D) 85 (Aug).

4 *Chagos Islanders v A-G* [2004] EWCA Civ 997 at [45], (2004) Times, 21 September, [2004] All ER (D) 85 (Aug).

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906. Effect of unconscionable delay ('laches') or acquiescence.

Nothing in the Limitation Act 1980 affects any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise¹. The consequence of this saving is that in certain cases a claim to relief may be barred on the equitable grounds of acquiescence² or unconscionable delay ('laches')³, where time has not expired under any limitation enactment or where no such enactment is applicable. Thus, the effect of acquiescence by any person in the violation of a right at the time when the violation is in progress, or after the violation is committed but before the expiry of the limitation period, can operate to deprive that person of any right to claim relief against the violation⁴. Moreover, despite the fact that under the enactments relating to the limitation of claims against trust property no period of limitation is applicable⁵, proceedings against a trustee for breach of trust may be barred in certain circumstances by the laches of the beneficiary⁶.

1 Limitation Act 1980 s 36(2). Prior to the introduction of the Civil Procedure Rules (the 'CPR'), it was held that a claim would not generally be struck out for want of prosecution if the limitation period had not expired, save in exceptional circumstances, as where there had been estoppel or where the claimant had been contumacious: see *Birkett v James* [1978] AC 297, [1977] 2 All ER 801, HL; *Department of Transport v Chris Smaller (Transport) Ltd* [1989] AC 1197, [1989] 1 All ER 897, HL; *Trill v Sacher* [1993] 1 All ER 961 at 979, [1993] 1 WLR 1379 at 1398, CA; cf however *Hogg v Hamilton and Northumberland Health Authority* [1993] 4 Med LR 369, [1992] PIQR P387, CA, where a claim was struck out as an abuse of process, notwithstanding that it was not time-barred, where the claimant was under a permanent disability and hence, under the Limitation Act 1980 s 28, the claim could never become time-barred (see PARA 1168 et seq); and *James Lazenby & Co v McNicholas Construction Co Ltd* [1995] 3 All ER 820, [1995] 1 WLR 615 (striking out an arbitration claim within the limitation period); and contrast the position in the county court, where the automatic strike out and reinstatement provisions could serve to strike out a claim in cases where the limitation period had not expired: see *Rastin v British Steel plc* [1994] 2 All ER 641, [1994] 1 WLR 732, CA; and *Bannister v SGB plc* [1997] 4 All ER 129, [1998] 1 WLR 1123, CA; *Re Order 17, rule 11 of the County Court Rules, Greig Middleton & Co Ltd v Denderowicz (No 2)* (1997) Times, 28 July, CA.

Under the CPR, however, the court's case management powers include power to strike out a statement of case if it appears to the court (1) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (2) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (3) that there has been a failure to comply with a rule, practice direction or court order: see CPR 3.4(2), which does not limit any other power of the court to strike out a statement of case (CPR 3.4(5)). In cases in which a claim is struck out pursuant to CPR 3.4(2)(c) (see head (3) above), the date at which the opportunity to pursue a claim is lost is usually on the date that there is a failure to comply with the relevant procedural requirement, as opposed to the actual date of strike out: *Khan v RM Falvey & Co* [2002] EWCA Civ 400, [2002] Lloyd's Rep PN 369, [2002] All ER (D) 361 (Mar), per curiam. It is no longer open to a litigant whose claim has been struck out on the grounds of inordinate and inexcusable delay to rely on the principle that a second claim commenced within the limitation period will not be struck out save in exceptional cases: see *Securum Finance Ltd v Ashton* [2001] Ch 291, [2000] All ER (D) 843, CA, distinguishing *Birkett v James*. See also PARA 950.

2 As to acquiescence generally see **EQUITY** vol 16(2) (Reissue) PARA 909.

3 As to laches generally see **EQUITY** vol 16(2) (Reissue) PARA 910-918. Delay is not of itself a ground for refusing relief; the delay must be unconscionable. See *Fisher v Brooker* [2008] EWCA Civ 287, [2008] BLR 1123, [2008] All ER (D) 73 (Apr), where it was further held that the right to relief may be lost irrespective of whether there has been detrimental reliance, as that is an element of estoppel only.

4 See *Fisher v Brooker* [2008] EWCA Civ 287, [2008] BLR 1123, [2008] All ER (D) 73 (Apr), which extended this principle to declaratory relief. See further **EQUITY** vol 16(2) (Reissue) PARA 909.

5 See the Limitation Act 1980 s 21(1); and PARA 1140.

6 See eg *Baker v Read* (1854) 3 WR 118; *Bright v Legerton (No 1)* (1860) 29 Beav 60 (where relief was refused to the beneficiaries); *Rochefoucauld v Boustead* [1897] 1 Ch 196, CA; *Re Rix, Rix v Rix* (1912) 56 Sol Jo 573 (where relief was granted); *Re Jarvis, Edge v Jarvis* [1958] 2 All ER 336, [1958] 1 WLR 815; and see **EQUITY** vol 16(2) (Reissue) PARA 915. In the absence of proof of knowledge of the facts, laches cannot be attributed to a beneficiary entitled in reversion because he does not take proceedings before his interest vests in possession: *Taylor v Cartwright* (1872) LR 14 Eq 167 at 176. As to the abolition of the distinction which formerly existed between the application of the statutes of limitation in the case of express trusts and in the case of implied or constructive trusts see PARA 1140.

UPDATE

906 Effect of unconscionable delay ('laches') or acquiescence

NOTES 3, 4--*Fisher*, cited, reversed in part: [2009] UKHL 41, [2009] 1 WLR 1764, [2009] All ER (D) 338 (Jul).

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907. Effect of negotiations between the parties.

The mere fact that negotiations have taken place between a claimant and a person against whom a claim is made does not debar the defendant from pleading a statute of limitation, even though the negotiations may have led to delay and caused the claimant not to bring his claim until the statutory period has passed¹. It seems, however, that the defendant may be debarred from pleading that the claim is time-barred if, during the negotiations, he has entered into an agreement for good consideration not to do so (a 'standstill agreement')², or, after he has represented that he wishes the claimant to delay proceedings and that the claimant will not be prejudiced by the delay, the claimant has acted on the faith of his representation³. In addition, where the court has a discretion to extend a limitation period⁴, the fact that the parties have been negotiating will be a relevant factor⁵. The court will, however, be reluctant to conclude that limitation is not available and will require clear evidence to that effect⁶.

The principles set out above may require review in the light of the European Directive on Mediation⁷, which must be implemented by member states (except Denmark) by 11 May 2011⁸. Under that Directive, member states must ensure that parties who choose mediation⁹ in an attempt to settle a dispute to which it applies¹⁰ are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process¹¹.

A promise not to plead a limitation statute, if accompanied by expressions which amount to an acknowledgment of the debt, may set time running afresh¹². If there is a new consideration for a promise not to plead the statute, a claim will lie for breach of the promise¹³, and there is some authority for the view that such a promise may be sufficient to prevent the defendant relying on a defence of the statute¹⁴. A promise not to plead the statute is not sufficient, if it is subject to a condition which is unfulfilled¹⁵, or if there is no agency and no capacity on the part of the person making the promise to act for the debtor¹⁶. Even in the absence of any express promise not to plead the statute, it seems that a defendant may be estopped from pleading it, if he has represented that he desires that the claimant delays proceedings and that the claimant will not be prejudiced by the delay and the claimant has acted on the faith of the representation¹⁷. The fact that a defendant has stated that he does not intend to rely on the statute at the trial of a claim does not prevent him from relying on it at a retrial¹⁸.

1 *Hewlett v LCC* (1908) 72 JP 136. As to the liability in negligence of a solicitor who fails to advise his client that time is running out see *Fletcher & Son v Jubb, Booth and Helliwell* [1920] 1 KB 275, CA; *Hesketh v Nicholson* (1940) 84 Sol Jo 646; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 822.

2 For examples of such agreements see eg *James Carleton Seventh Earl of Malmesbury v Strutt and Parker (a partnership)* [2008] EWHC 424 (QB), 118 ConLR 68, [2008] All ER (D) 257 (Mar); *Nomura International plc v Granada Group Ltd* [2007] EWHC 642 (Comm), [2007] 2 All ER (Comm) 878, [2007] All ER (D) 404 (Mar).

3 There must be a clear and unequivocal representation that the defendant will not rely upon the statutory limitation defence: see *Hillingdon London Borough Council v ARC Ltd (No 2)* [2000] 3 EGLR 97, [2000] RVR 283, CA, applied in *Super Chem Products Ltd v American Life and General Insurance Co Ltd* [2004] UKPC 02, [2004] 2 All ER 358, [2004] 1 All ER (Comm) 713. See also *Seechurn v Ace Insurance Sa-Nv (formerly Cigna Insurance Co of Europe Sa-Nv)* [2002] EWCA Civ 67, [2002] 2 Lloyd's Rep 390, [2002] All ER (D) 74 (Feb).

4 See PARA 1001 et seq.

5 See *Asianic International Panama SA v Transocean Ro-Ro Corpn, The Seaspeed America* [1990] 1 Lloyd's Rep 150 (liability admitted; parties failed to realise the time limit had expired due to negotiations).

6 See eg *Bridgestart Properties Ltd v London Underground Ltd* [2004] EWCA Civ 793, [2004] RVR 196, [2004] All ER (D) 267 (Jun) (the mere fact that considerable negotiations had taken place between the parties about a claim for settlement damage both before and after the limitation period had expired did not of itself create any estoppel preventing the defendant from relying on its defence). See also *Law Society v Sephton & Co* [2004] EWHC 544 (Ch), [2004] All ER (D) 112 (Feb) (revsd without affecting the estoppel point [2004] EWCA Civ 1627, [2005] QB 1013, [2004] All ER (D) 180 (Dec); the Court of Appeal's decision affd without discussion of the estoppel point [2006] UKHL 22, [2006] 2 AC 543, [2006] 3 All ER 401); *Rowan Companies Inc v Lambert Eggink Offshore Consultants VOF (No 2)* [1999] 2 Lloyd's Rep 443, [1999] All ER (D) 703.

7 The European Parliament and EC Council Directive 2008/52 (OJ L136, 25.5.2008, p 3) on certain aspects of mediation in civil and commercial matters.

8 European Parliament and EC Council Directive 2008/52 (OJ L136, 25.5.2008, p 3) art 12.

9 For these purposes, 'mediation' means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a member state: European Parliament and EC Council Directive 2008/52 (OJ L136, 25.5.2008, p 3) art 3(a). It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question; but it excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question: art 3(a).

10 The Mediation Directive applies, in cross-border disputes, to civil and commercial matters except as regards rights and obligations which are not at the parties' disposal under the relevant applicable law. It does not extend, in particular, to revenue, customs or administrative matters or to the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*): European Parliament and EC Council Directive 2008/52 (OJ L136, 25.5.2008, p 3) art 1(2). In that Directive, the term 'member state' means member states with the exception of Denmark: art 1(3). For these purposes, a cross-border dispute is one in which at least one of the parties is domiciled or habitually resident in a member state other than that of any other party on the date on which: (1) the parties agree to use mediation after the dispute has arisen; (2) mediation is ordered by a court; (3) an obligation to use mediation arises under national law; or (4) for the purposes of art 5 (recourse to mediation) an invitation is made to the parties: art 2(1). Notwithstanding art 2(1), for the purposes of art 7 (confidentiality of mediation) and art 8 (limitation: see the text and note 11) a cross-border dispute is also one in which judicial proceedings are, or arbitration following mediation between the parties is, initiated in a member state other than that in which the parties were domiciled or habitually resident: art 2(2).

11 See European Parliament and EC Council Directive 2008/52 (OJ L136, 25.5.2008, p 3) art 8(1). This is without prejudice to provisions on limitation or prescription periods in international agreements to which member states are party: art 8(2).

12 *Gardner v M'Mahon* (1842) 3 QB 561 at 568 per Wightman J; *Bewley v Power* (1833) Hayes & Jo 368; and see *Fuller v Redman (No 2)* (1859) 26 Beav 614 at 619 per Romilly MR. As to the effect of acknowledgments see generally PARA 1181 et seq. As to the position where an individual voluntary arrangement ('IVA') under the insolvency legislation has been entered into see *Tanner v Everitt* [2004] EWHC 1130 (Ch), [2004] BPIR 1026, [2004] All ER (D) 192 (May).

13 *East India Co v Odithurn Paul* (1850) 7 Moo PCC 85 at 112; and see *Waters v Earl of Thanet* (1842) 2 QB 757.

14 See *Lade v Trill*, *Trill v Lade* (1842) 6 Jur 272; *Wright v John Bagnell & Sons Ltd* [1900] 2 QB 240, CA (a decision under the former workmen's compensation legislation); and *Lubovsky v Snelling* [1944] KB 44, [1943] 2 All ER 577, CA (a decision under the Fatal Accidents Act 1846 s 3 (repealed); see now PARA 1000); *Williams v Blaenau Gwent County Borough Council (No 2)* [1999] 2 EGLR 195, Lands Tribunal. Contrast *Law Society v Sephton & Co* [2004] EWCA Civ 1627 at [130], [2005] QB 1013 at [130], [2004] All ER (D) 180 (Dec) per Neuberger LJ; *Rowan Companies Inc v Lambert Eggink Offshore Consultants VOF (No 2)* [1999] 2 Lloyd's Rep 443, [1999] All ER (D) 703; *Cotterell v Leeds Day* [2000] All ER (D) 03. As to the difficulty of establishing estoppel in relation to the Limitation Act 1980 see *Holding and Management (Solitaire) Ltd v Ideal Homes North West Ltd* [2004] EWHC 2408 (TCC) at [83], 96 ConLR 114 at [83], [2004] All ER (D) 29 (Oct) per Judge Peter Coulson QC, approving *McGee on Limitation Periods* (4th Edn, 2002 (see now 4th Edn, 2006)) para 21.020.

15 *Buenos Ayres Municipality v Baring Bros* (1924) 59 L Jo 167.

16 *Re Beavan, Davies, Banks & Co v Beavan* [1912] 1 Ch 196 at 204 (promise by manager of the property of a person of unsound mind).

17 See *Paterson v Glasgow Corp* (1908) 46 SLR 10. As to estoppel by conduct see generally **ESTOPPEL** vol 16(2) (Reissue) PARA 1058 et seq.

18 *Venn v Tedesco* [1926] 2 KB 227 at 237.

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(ii) Other Limitation Legislation

A. IN GENERAL

908. Enactments prescribing periods of limitation in special cases.

In addition to the Acts which contain provisions of general scope with regard to limitation of claims¹, a number of public general Acts and local and personal Acts have from time to time been passed limiting the periods within which proceedings can be brought in particular cases.

Although for the most part limitation periods in local and personal enactments have historically been unified², it would appear there may still be some remaining in force prescribing special periods of limitation³.

There are a number of Acts of a public general nature which prescribe special periods of limitation for particular proceedings and which are accordingly excluded from the application of the primary limitation statutes⁴. Amongst the more important of those proceedings to which special statutory time limits apply are: civil proceedings in magistrates' courts⁵; maritime claims⁶; claims in respect of international carriage⁷; certain proceedings before employment tribunals⁸; proceedings in respect of discrimination⁹; and proceedings against public authorities¹⁰ under the Human Rights Act 1998¹¹. This list is not exhaustive and other proceedings for which special time limits are set down within individual enactments are dealt with elsewhere in this work.

1 See PARA 901.

2 I.e. by (1) the Limitations of Actions and Costs Act 1842 s 5 (repealed), which laid down a period of two years or, in the case of continuing damage, one year after the damage had ceased; and (2) the Public Authorities Protection Act 1893 (repealed), in so far as they related to proceedings against public authorities.

3 These Acts may not be affected by the limitation statutes passed subsequently, by virtue eg of the Limitation Act 1980 s 39 (see PARA 918).

Some old Acts which fixed a special period of limitation provided that the period should begin from the act or fact committed and not from the date on which the cause of action accrued. The effect of these provisions was often to bar a claim before a claimant had experienced any damage (see eg *Huyton and Roby Gas Co v Liverpool Corpn* [1926] 1 KB 146 at 155, CA, per Scrutton LJ, and at 156-157 per Atkin LJ), except in cases of continuing damage (see eg *Whitehouse v Fellowes* (1861) 10 CBNS 765). In cases of continuing injury, such as pollution of a stream (see eg *Kennet and Avon Canal Co v Great Western Rly Co* (1845) 7 QB 824), special additional periods of limitation were set in some old Acts. The effect of this was to allow recovery in respect of all damage caused, if brought within the limitation period after the ceasing of the injury, not just the damage caused by the last causative injury: see eg *Earl of Harrington v Derby Corpn* [1905] 1 Ch 205.

4 The Limitation Act 1980 does not apply to claims for which a limitation period is prescribed by or under any other enactment: see s 39; and PARA 918. It is not, however, certain that all the enactments cited in notes 5-9 would be held to be enactments prescribing a limitation period for this purpose: see *Airey v Airey* [1958] 2 QB 300, [1958] 2 All ER 571, CA; and cf *Gregory v Torquay Corpn* [1911] 2 KB 556 at 559, 561, DC (affd [1912] 1 KB 442, CA).

5 See the Magistrates' Courts Act 1980 s 127(1) (information to be laid or complaint to be made within six months from the time when the offence was committed or the matter of complaint arose); and **MAGISTRATES** vol 29(2) (Reissue) PARA 589.

6 See PARA 912.

7 See PARA 913.

8 See eg the Employment Rights Act 1996 ss 23(2), 34, 48 (three-month time limits); and PARA 911. See generally **EMPLOYMENT**.

9 See eg the Sex Discrimination Act 1975 s 76; the Race Relations Act 1976 s 68 (various limitation periods set); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 416, 502. Note that a cause of action may subsist under European Community law, notwithstanding the absence of such a right under domestic law and, in such a case, the time limitations prescribed by domestic legislation do not apply: see PARA 1239.

10 In proceedings under the Human Rights Act 1998 s 7(1)(a) by a person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by s 6(1) (see PARA 914 note 1) and who is, or would be, a victim of the unlawful act: see s 7(1).

11 Proceedings under the Human Rights Act 1998 s 7(1)(a) (see note 10) must be brought before the end of (1) the period of one year beginning with the date on which the act complained of took place; or (2) such longer period as the court or tribunal considers equitable having regard to all the circumstances; but that is subject to any rule imposing a stricter time limit in relation to the procedure in question: s 7(5). In determining a limitation issue under s 7(5)(b) (see head (2) above), the court ought to exercise its discretion, by analogy with the Limitation Act 1980 s 33 (see PARAS 1001-1002), having regard to all the circumstances of the individual claimant: *Dobson v Thames Water Utilities Ltd (Water Services Regulation Authority (Ofwat) intervening)* [2007] EWHC 2021 (TCC), [2008] 2 All ER 362, 116 ConLR 135. In doing so, one of those circumstances will be the circumstances of the group in a group claim: see *Dobson v Thames Water Utilities Ltd (Water Services Regulation Authority (Ofwat) intervening)* at [237], [245], [260], applying dictum of Sir Michael Turner in *Cameron v Network Rail Infrastructure Ltd* [2006] EWHC 1133 (QB) at [43], [2007] 3 All ER 241 at [43], [2007] 1 WLR 163.

UPDATE

908 Enactments prescribing periods of limitation in special cases

NOTE 11--See *M v Ministry of Justice* [2009] EWCA Civ 419, [2009] All ER (D) 44 (Jun) (human rights proceedings issued after one year, not brought in time).

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909. Acts done under statutory authority.

Where a private person or company to whom special statutory powers are given to carry out particular works is sued for some unauthorised act and is entitled to the benefit of a special period of limitation for an act done in execution of the statute, that person or company generally comes within the protection of the statute if in doing the act complained of he was intending to carry out the particular works contemplated by the statute¹ or if he believed in the existence of a state of facts which would have justified him in doing as he did². It is not necessary that he should have had reasonable grounds for his belief or that he should have had the statute in his mind or have known of its existence³.

¹ See eg *Lord Oakley v Kensington Canal Co* (1833) 5 B & Ad 138.

² *Chamberlain v King* (1871) LR 6 CP 474. As to acts done under statutory authority generally see **ADMINISTRATIVE LAW**. See also *Tate and Lyle Industries Ltd v GLC* [1983] 2 AC 509, [1983] 1 All ER 1159, HL; **NUISANCE** vol 78 (2010) PARA 192; and **WATER AND WATERWAYS** vol 101 (2009) PARA 692.

³ See eg *Roberts v Orchard* (1863) 2 H & C 769, Ex Ch.

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910. Acts relating to exercise of foreign jurisdiction.

Claims, suits, prosecutions, or proceedings for certain acts, neglects, or defaults relating to the exercise of foreign jurisdiction¹ cannot lie or be instituted:

- 1 (1) in any court within Her Majesty's dominions², unless commenced within six months next after the act, neglect, or default complained of³, or, in case of a continuance of injury or damage⁴, within six months next after its ceasing, or, where the cause of action arose outside Her Majesty's dominions, within six months after the parties to the proceedings have been within the jurisdiction of the court in which they are instituted⁵; nor
- 2 (2) in any of Her Majesty's courts outside Her Majesty's dominions, unless the cause of action arose within the jurisdiction of that court, and the claim is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after its ceasing⁶.

1 lie any act done in pursuance or execution, or intended execution, of the Foreign Jurisdiction Act 1890 or of any enactment repealed by that Act, or of any Order in Council under that Act, or of any such jurisdiction of Her Majesty as is mentioned in it, or in respect of any alleged neglect or default in the execution of that Act, or of any such enactment, Order in Council or jurisdiction as above: see s 13(1). As to the provisions of the Foreign Jurisdiction Act 1890 generally see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARAS 240, 241. Section 13 was impliedly repealed by the Public Authorities Protection Act 1893 ss 1(a), (c), 2 (repealed) in relation to proceedings in the United Kingdom to which that Act applied.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

2 As to the meaning of 'Her Majesty's dominions' see **COMMONWEALTH** vol 13 (2009) PARA 707.

3 As to the effect of the provision that the period of limitation is to run from the act complained of, and not from the time when the cause of action accrues, see PARA 908 note 3.

4 As to the meaning of 'continuance of injury or damage' in this context see PARA 908 note 3.

5 Foreign Jurisdiction Act 1890 s 13(1)(a).

6 Foreign Jurisdiction Act 1890 s 13(1)(b).

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B. EMPLOYMENT

911. Time limits for proceedings under employment legislation.

Time limits are laid down for the commencement of certain proceedings in employment tribunals under employment protection legislation¹. In the majority of cases an employment tribunal may not entertain a complaint by an employee unless it is presented before the end of the period of three months beginning with the day on which the ground for the complaint arose, or within such further period as the tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented within three months². A question as to an employee's right to a redundancy payment can, however, be referred to an employment tribunal within six months from the relevant date³ and a claim for contractual redundancy payments may be subject to a six-year limitation period, since it is based on contract⁴. No claim in respect of the operation of an equality clause relating to a person's employment can be referred to an employment tribunal unless the proceedings are instituted on or before the qualifying date⁵. There are several other classes of claim under the employment legislation, some with a short time limit and others for which no time limit is specified, which are dealt with elsewhere in this work⁶.

1 See generally the Employment Rights Act 1996; and **EMPLOYMENT**.

2 See eg the Employment Rights Act 1996 s 11(4) (ss 11, 34, 164 amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)) (proceedings to determine the particulars of terms of employment which the employer has failed to give: see **EMPLOYMENT** vol 39 (2009) PARA 100); and the Employment Rights Act 1996 s 34(2) (as so amended) (complaints in connection with failure to make guarantee payments: see **EMPLOYMENT** vol 39 (2009) PARA 241).

3 See the Employment Rights Act 1996 s 164(1)(c), (2)(b) (as amended: see note 2). As to the meaning of the 'relevant date' see s 145 (amended by the Employment Relations Act 1999 ss 9, 44, Sch 4 Pt III paras 5, 26, Sch 9, Table 2; and by SI 2002/2034). See further **EMPLOYMENT** vol 40 (2009) PARA 826.

4 See *Greenwich Health Authority v Skinner* [1989] ICR 220, EAT.

5 See the Equal Pay Act 1970 s 2(4) (substituted by SI 2003/1656). As to determination of the qualifying date see the Equal Pay Act 1970 s 2ZA (added by SI 2003/1656).

6 See generally **EMPLOYMENT**.

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C. INTERNATIONAL CARRIAGE AND MARITIME CLAIMS

912. Maritime claims.

The time within which proceedings against a ship or a shipowner must be brought is governed in general by the provisions of the Merchant Shipping Act 1995 and by certain international conventions given the force of law by that Act¹.

Accordingly:

- 3 (1) no proceedings to enforce any claim or lien against a ship or her owners in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it or for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship may be brought after the period of two years from the date when the damage or loss was caused or the loss of life or injury was suffered, the extent of the fault being immaterial for these purposes; nor may any proceedings to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury be brought after the period of one year from the date of payment; but any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit²;
- 4 (2) any claim for damages arising out of the death of, or personal injury to, a passenger or for the loss of, or damage to, luggage is time-barred after a period of two years from the date when disembarkation took place or ought to have taken place, or if death occurred after that date, from the date of death, provided the period does not exceed three years from disembarkation; the law of the court seised of the case governs the grounds of suspension and interruption of limitation periods; but the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen and the declaration or agreement must be in writing³;
- 5 (3) no claim to enforce a claim in respect of a liability for oil pollution⁴ may be entertained by any court in the United Kingdom unless the claim is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the liability was incurred⁵;
- 6 (4) no claim to enforce a claim against the International Fund established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992⁶ may be entertained by a court in the United Kingdom unless the claim is commenced or a third party notice of a claim to enforce a claim against the owner or his guarantor in respect of the same damage is given to the fund, not later than three years after the damage occurred⁷; nor may a claim to enforce a claim against the fund be entertained by a court in the United Kingdom unless the claim is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the claim against the fund arose⁸;

- 7 (5) any claim relating to payment under the Salvage Convention 1989 is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years, the limitation period commencing on the day on which the salvage operations are terminated; the person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant and this period may in the like manner be further extended; and a claim for indemnity by a person liable may be instituted even after the expiration of the limitation period so provided, if brought within the time allowed by the law of the state where proceedings are instituted⁹.

Where the Hague-Visby Rules apply, by virtue of the Carriage of Goods by Sea Act 1971, the carrier and the ship are in any event discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery, or of the date when the goods should have been delivered¹⁰. The claim may be brought in any competent jurisdiction, not necessarily in the jurisdiction where the matter is ultimately decided; and the claim must be brought in the name of a party who has title to sue¹¹. The one-year period may be extended if the parties so agree after the cause of action has arisen¹².

A claim for indemnity against a third person may, however, be brought even after the expiration of the period of one year so provided if brought within the time allowed by the law of the court seised of the case; but the time allowed must be not less than three months, commencing from the day when the person bringing such claim for indemnity has settled the claim or has been served with process in the claim against himself¹³.

A bill of lading may provide for a shorter limitation period than that allowed for in the Hague-Visby Rules, even though those rules are otherwise incorporated in the contract¹⁴; but clear words are required for a time bar, so that in a case of doubt or ambiguity the conflict is to be resolved in favour of the longer time limit¹⁵.

No legal proceedings arising out of a dispute relating to the application or operation of the Code of Conduct for Liner Conferences may be brought in the United Kingdom after the end of the period of two years from the date on which the cause of action accrued or, if later, the end of the period of six months from the date on which conciliation proceedings relating to the dispute were completed or abandoned¹⁶; that Code of Conduct, however, no longer has effect within the European Union¹⁷.

1 See the Merchant Shipping Act 1995 Pt VII (ss 183-192A); the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) art 16; the International Convention on Salvage (London, 28 April 1989; Misc 8 (1991); Cm 1526) art 23; and see generally **SHIPPING AND MARITIME LAW**.

2 See the Merchant Shipping Act 1995 s 190; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1063. Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within the jurisdiction of the court or the territorial sea of the country to which the claimant's ship belongs or in which the claimant resides or has his principal place of business, must extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship: see s 190(6). In determining whether a mandatory extension of time for service under s 190(6) has to be granted, the issue is whether there has been a reasonable opportunity for an arrest during the limitation period; and that is to be judged objectively without regard to whether steps have actually been taken in an attempt to arrest in a particular jurisdiction: *Santos v Owners of the Baltic Carrier* [2001] 1 Lloyd's Rep 689, [2001] All ER (D) 247 (Feb).

The Merchant Shipping Act 1995 s 190 does not bar claims for, inter alia, loss of life of, or personal injury to, persons carried in the ship against whose owners the claim is made: see *The Niceto de Larrinaga, Navarro v Larrinaga Steamship Co Ltd* [1966] P 80, [1965] 2 All ER 930. See also *The Caliph* [1912] P 213, 82 LJP 27 (decided under the Maritime Conventions Act 1911 s 8 (repealed)).

3 See the Convention relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202) art 16, given the force of law by the Merchant Shipping Act 1995 s 183(1), Sch 6 Pt I; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 647.

The Convention relating to the Carriage of Passengers and their Luggage by Sea art 16 applies to arbitral proceedings as it applies to a claim: see the Merchant Shipping Act 1995 s 183(2), Sch 6 Pt II para 7 (substituted by the Arbitration Act 1996 Sch 3 para 61); and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 647.

Although the provisions of the Limitation Act 1980 regarding extension or exclusion of ordinary time limits (see PARA 1168 et seq) are applicable to the Athens Convention and are not excluded by the Limitation Act 1980 s 39 (see PARA 918), s 33 (see PARAS 1001-1002) cannot be regarded as operating to disapply the two-year limitation period for personal injury claims under the Convention relating to the Carriage of Passengers and their Luggage by Sea art 16: *Higham v Stena Sealink Ltd* [1996] 3 All ER 660, [1996] 1 WLR 1107, CA (claimant time-barred); and see also *Norfolk v My Travel Group plc* [2004] 1 Lloyd's Rep 106.

4 le under the Merchant Shipping Act 1995 s 153, s 153A or s 154.

5 See the Merchant Shipping Act 1995 s 162. As to the meaning of 'United Kingdom' see PARA 910 note 1.

6 le under the Merchant Shipping Act 1995 Pt VI Ch IV (ss 172-182).

7 See the Merchant Shipping Act 1995 s 178(1) (amended by the Merchant Shipping (Pollution) Act 2006 ss 3, 4(3)).

8 See the Merchant Shipping Act 1995 s 178(2).

9 See the International Convention on Salvage (London, 28 April 1989; Misc 8 (1991); Cm 1526) art 23, given the force of law by the Merchant Shipping Act 1995 s 224(1), Sch 11 Pt I; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 914.

10 See the Hague-Visby Rules art III r 6; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 400.

11 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 400.

12 See the Hague-Visby Rules art III r 6. A notice in writing which, read in its context, makes it clear, by whatever language, that the sender is invoking an arbitration agreement and is requiring the recipient to take steps in response to enable the tribunal to be constituted, is sufficient to commence the arbitration, and it is not necessary for the claimant to expressly call on the respondent to appoint his arbitrator in order to do so: *Allianz Versicherungsaktiengesellschaft v Fortuna Co Inc, The Baltic Universal* [1999] 2 All ER 625, [1999] 1 WLR 2117, not following *Vosnoc Ltd v Transglobal Projects Ltd* [1998] 2 All ER 990, [1998] 1 WLR 101.

13 See the Hague-Visby Rules art III r 6 bis; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 401.

14 See eg *Finagra (UK) Ltd v OT Africa Line Ltd* [1998] 2 Lloyd's Rep 622, [1998] All ER (D) 296 (nine months).

15 As to the principles to be applied see *Finagra (UK) Ltd v OT Africa Line Ltd* [1998] 2 Lloyd's Rep 622, [1998] All ER (D) 296.

16 See the Merchant Shipping (Liner Conferences) Act 1982 s 8(1). In England and Wales the following provisions of the Limitation Act 1980 apply to the limitation period prescribed by the Merchant Shipping (Liner Conferences) Act 1982 s 8(1) as they apply to the limitation periods prescribed by the Limitation Act 1980: (1) s 28(1) (extension of period in case of disability: see PARA 1171) but with the substitution of 'two years' for 'six years'; (2) s 32(1) (postponement of period in case of fraud, concealment or mistake: see PARA 1220); (3) s 35 (application to new claims in pending proceedings: see PARAS 929, 931, 944): Merchant Shipping (Liner Conferences) Act 1982 s 8(2).

17 See **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 78.

UPDATE

912 Maritime claims

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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913. International carriage of goods and persons in general.

Specific statutory provision is made for limitation of time for proceedings in relation to international carriage by air¹, road² and rail³ pursuant to a number of international transport conventions implemented within English law and dealt with in detail elsewhere in this work⁴.

No claim against a carrier's servant or agent which arises out of damage to which any of the Carriage by Air Conventions⁵ applies may, if he was acting within the scope of his employment, be brought after more than two years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped⁶.

In the case of carriage by road, the following provisions apply:

- 8 (1) the period of limitation for a claim arising out of carriage under the relevant convention⁷ is one year or, in the case of wilful misconduct, or such default as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct, three years⁸;
- 9 (2) a written claim suspends the period of limitation until such date as the carrier rejects the claim by notification in writing and returns the documents attached to it; if a part of the claim is admitted the period of limitation starts to run again only in respect of that part of the claim still in dispute⁹;
- 10 (3) subject to the provisions of head (2) above, the extension of the period of limitation is governed by the law of the court or tribunal seised of the case, and that law also governs the fresh accrual of rights of action¹⁰;
- 11 (4) a right of action which has become barred by lapse of time may not be exercised by way of counter-claim or set-off¹¹.

In the case of carriage by rail:

- 12 (a) the commencement of arbitration proceedings under the relevant convention¹² has the same effect, as regards the interruption of periods of limitation, as that attributed by the applicable provisions of substantive law to the institution of a claim in the ordinary courts or tribunals¹³;
- 13 (b) with regard to claims for damages based on the liability of the carrier in case of death of, or personal injury to, rail passengers, the period of limitation is, in the case of a passenger, three years from the day after the accident, and in the case of other persons entitled, three years from the day after the death of the passenger, subject to a maximum of five years from the day after the accident¹⁴; and the period of limitation for other claims arising from the contract of carriage of passengers is one year, or two years in the case of a claim for loss or damage resulting from an act or omission committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result¹⁵;
- 14 (c) the period of limitation for a claim arising from the international contract of carriage of goods is generally one year, but is two years in certain specified cases¹⁶.

1 The Carriage by Air Conventions are (1) the Convention known as 'the Warsaw Convention as amended at The Hague, 1955' (the applicable provisions of which are set out in the Carriage by Air Act 1961 Sch 1); (2) that Convention as further amended by Protocol No 4 of Montreal, 1975 ('the Convention as amended') (the applicable provisions of which are set out in the Carriage by Air Act 1961 Sch 1A); and (3) the Convention known as 'the Montreal Convention 1999' ('the Montreal Convention') (the applicable provisions of which are set out in the Carriage by Air Act 1961 Sch 1B), so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons: see s 1(5), (6) (s 1 substituted by SI 2002/263, art 2(1), (2)).

2 See the Convention on the Contract for the International Carriage of Goods by Road, given the force of law by the Carriage of Goods by Road Act 1965 s 1, Schedule; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 650.

3 See the Convention concerning International Carriage by Rail ('COTIF') of 9 May 1980, as modified by the Vilnius Protocol of 3 June 1999 and given the force of law by the Railways (Convention on International Carriage by Rail) Regulations 2005, SI 2005/2092, reg 3; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 683 et seq.

4 See generally **CARRIAGE AND CARRIERS**.

5 See note 1.

6 See the Carriage by Air Act 1961 s 5(1) (amended by SI 2002/263); and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 164. The Warsaw Convention applies as soon as the passenger has presented a valid ticket for travel and the ticket has been accepted and a boarding pass issued; it then provides the exclusive remedy for the claimant who has no separate cause of action at common law: see *Phillips v Air New Zealand* [2002] EWHC 800 (Comm), [2002] 1 All ER (Comm) 801, [2002] 2 Lloyd's Rep 408. By contrast, once the passenger has disembarked from the aircraft and is on his way to passport control, his actions no longer fall within the convention and the limitation period for any claim for an injury he then suffers is governed by domestic law: see *Adatia v Air Canada* [1992] PIQR P 238, (1992) Times, 4 June, CA.

7 See note 2.

8 Carriage of Goods by Road Act 1965 Schedule art 32(1). The period of limitation begins to run: (1) in the case of partial loss, damage or delay in delivery, from the date of delivery; (2) in the case of total loss, from the thirtieth day after the expiry of the agreed time limit or where there is no agreed time limit from the sixtieth day from the date on which the goods were taken over by the carrier; (3) in all other cases, on the expiry of a period of three months after the making of the contract of carriage; and the day on which the period of limitation begins to run is not included in the period: art 32(1). The question as to whether a shorter time limit may be agreed between the parties was left open in *International Distillers and Vintners Ltd (t/a Percy Fox & Co) v JF Hillebrand (UK) Ltd* (2000) Times, 25 January, [1999] All ER (D) 1462.

9 Carriage of Goods by Road Act 1965 Schedule art 32(2). The burden of proof of the receipt of the claim, or of the reply and of the return of the documents, rests with the party relying upon these facts; and the running of the period of limitation is not suspended by further claims having the same object: art 32(2).

10 Carriage of Goods by Road Act 1965 Schedule art 32(3).

11 Carriage of Goods by Road Act 1965 Schedule art 32(4).

12 See note 3.

13 Convention concerning International Carriage by Rail art 32(1).

14 Convention concerning International Carriage by Rail Appendix A art 60(1).

15 Convention concerning International Carriage by Rail Appendix A art 60(2). As to the running of time see art 60(3).

When a claim is addressed to a carrier in writing in accordance with Appendix A art 55 together with the necessary supporting documents, the period of limitation is suspended until the day that the carrier rejects the claim by notification in writing and returns the documents submitted with it. If part of the claim is admitted, the period of limitation runs again in respect of that part of the claim still in dispute. The burden of proof of receipt of the claim or of the reply and of the return of the documents lies on the party who relies on those facts. The period of limitation is not suspended by further claims having the same object: Appendix A art 60(4). A right of action which has become time-barred may not be exercised further, even by way of counterclaim or by way of exception: Appendix A art 60(5). The suspension and interruption of periods of limitation is otherwise governed by national law: Appendix A art 60(6).

16 Convention concerning International Carriage by Rail Appendix B art 48(1). The period is two years in the case of a claim: (1) to recover a cash on delivery payment collected by the carrier from the consignee; (2) to

recover the proceeds of a sale effected by the carrier; (3) for loss or damage resulting from an act or omission done with intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result; (4) based on one of the contracts of carriage prior to the reconsignment in the case provided for in art 28: Appendix B art 48(1). As to the running of time see Appendix B art 48(2).

The period of limitation is suspended by a claim in writing in accordance with Appendix B art 43 until the day that the carrier rejects the claim by notification in writing and returns the documents submitted with it. If part of the claim is admitted, the period of limitation starts to run again in respect of the part of the claim still in dispute. The burden of proof of receipt of the claim or of the reply and of the return of the documents lies on the party who relies on those facts. The period of limitation is not suspended by further claims having the same object: Appendix B art 48(3). A right of action which has become time-barred may not be exercised further, even by way of counterclaim, or relied upon by way of exception: Appendix B art 48(4). The suspension and interruption of periods of limitation is otherwise governed by national law: Appendix B art 48(5).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(1) THE LEGISLATION/(iii) The Human Rights Act 1998/914. Impact of the Human Rights Act 1998.

(iii) The Human Rights Act 1998

914. Impact of the Human Rights Act 1998.

Under the Human Rights Act 1998, it is unlawful for a court or tribunal to act in a way which is incompatible with a Convention right¹. The following Convention rights are particularly relevant in the context of limitation periods:

- 15 (1) in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law²;
- 16 (2) every natural or legal person is entitled to the peaceful enjoyment of his possessions and no one must be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law³.

The European Court of Human Rights has held that while the right to institute proceedings before a court in civil matters is one aspect of the right to a fair trial as set out in head (1) above, it is not absolute. A state is able to limit the right of access, provided that the limitation applied does not restrict or reduce the access left to an individual to such an extent that the very essence of the right is impaired. Any such limitation must pursue a legitimate aim and be reasonably proportionate to the means employed to achieve it⁴. It would, however, be inconsistent with the rule of law if a state could remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on categories of persons⁵. Furthermore, the strict application of a procedural rule such as a limitation period by the domestic courts may in some circumstances deprive an applicant of his right of access to a court in violation of the right to a fair trial⁶.

Under the Civil Procedure Rules (the 'CPR'), where a party applies to amend his statement of case and a limitation period has already expired, the court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings⁷; the Court of Appeal has held that this rule, if too strictly applied, may violate the right to a fair trial but is capable of being interpreted in a way that will not do so⁸. The CPR provide for the deemed day of service of a claim form⁹ and that provision is not rebuttable by evidence of actual receipt of the claim form by the defendant¹⁰; the Court of Appeal has held that this position is not incompatible with the right to a fair trial on the ground that certainty in the time of service of a claim form is an important requirement for the efficient performance of the case management functions of the court and it is legitimate to promote that aim by setting a deadline of four months from issue for service of the claim form by one of the permitted methods and by using the legal technique of deemed service to bolster the certainty. Moreover, justice and proportionality require that there are firm procedural rules which ought to be observed, not that general rules are to be construed to create exceptions and excuses whenever those who could easily have complied with the rules have mistakenly failed to do so¹¹. On the other hand, it has been suggested that refusal to allow an application for extension of time for service¹² on the grounds that the claim is weak may constitute a breach of the Convention right to a fair trial unless the court is able to conclude that an application to strike out, or for summary judgment, would succeed¹³.

With regard to the right to peaceful enjoyment of possessions, the Grand Chamber of the European Court of Human Rights has held, by a majority, that the domestic law of adverse possession prior to the Land Registration Act 2002¹⁴, whereby it was possible for a registered owner of land to lose his title through inadvertence, did not violate that right¹⁵. This decision reverses an earlier decision of the former fourth section of that court, again by a majority, that the application of the provisions of the Land Registration Act 1925 and the Limitation Act 1980 to deprive the applicants in the case in question of their title to registered land imposed on them an individual and excessive burden and upset the fair balance between the demands of the public interest on the one hand and the applicants' right to the peaceful enjoyment of their possessions on the other¹⁶.

In a different context, the High Court has held that the right to recover input tax for the purposes of value added tax is a not a 'possession' within the Convention right set out in head (2) above, and that a three-year time limit on claims for such recovery does not breach that Convention right¹⁷.

1 See the Human Rights Act 1998 s 6(1), (3)(a); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to Convention rights see s 1(3), Sch 1. See also **COURTS** vol 10 (Reissue) PARA 316. As to the limitation period under s 7(5) for bringing proceedings against a public authority which is alleged to have acted in breach of s 6(1) see PARA 908 note 11.

2 Human Rights Act 1998 Sch 1 Pt I art 6(1) (incorporating into domestic law the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(1)).

3 Human Rights Act 1998 Sch 1 Pt II art 1 (incorporating into domestic law the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Protocol I art 1). These provisions do not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties: Human Rights Act 1998 Sch 1 Pt II art 1.

4 See Applications 22083/93, 22095/93 *Stubbings v United Kingdom* (1996) 23 EHRR 213, [1997] 3 FCR 157, ECtHR.

5 See Application 17101/90 *Fayed v United Kingdom* (1994) 18 EHRR 393, [1994] ECHR 17101/90 (para 65), ECtHR.

6 See Application 28090/95 *Pérez de Rada Cavanilles v Spain* (1998) 29 EHRR 109, [1998] ECHR 28090/95, ECtHR.

7 See CPR 17.4(2); and PARA 931.

8 See *Goode v Martin* [2001] EWCA Civ 1899, [2002] 1 All ER 620, [2002] 1 WLR 1828.

9 See CPR 6.14; and PARA 930 note 5.

10 See *Godwin v Swindon Borough Council* [2001] EWCA Civ 1478, [2001] 4 All ER 641, [2002] 1 WLR 997, cited in PARA 930 note 5.

11 See *Anderton v Clwyd County Council* [2002] EWCA Civ 933, [2002] 3 All ER 813, [2002] 1 WLR 3174.

12 Ie under CPR 3.1(2)(a).

13 See *Robert v Momentum Services Ltd* [2003] EWCA Civ 299, [2003] 2 All ER 74, [2003] 1 WLR 1577.

14 As to adverse possession under the Land Registration Act 2002 see PARA 1029 et seq.

15 See Application 44302/02 *JA Pye (Oxford) Ltd v United Kingdom* [2007] RVR 302, (2007) 23 BHRC 405, ECtHR, applied in *Ofulue v Bossert* [2008] EWCA Civ 7, (2008) Times, 11 February, [2008] All ER (D) 236 (Jan). The claimants in *JA Pye (Oxford) Ltd v United Kingdom* were unable to argue their case under the Human Rights Act 1998 as the Act was not in force at the relevant time and does not have retrospective effect: see *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30 at [65], [2003] 1 AC 419 at [65], [2002] 3 All ER 865 per Lord Browne-Wilkinson.

16 See Application 44302/02 *JA Pye (Oxford) Ltd v United Kingdom* (2005) 19 BHRC 705, [2005] 3 EGLR 1, ECtHR. For a similar decision of a domestic court see *Beaulane Properties Ltd v Palmer* [2005] EWHC 1071 (Ch), [2006] Ch 79, [2005] 4 All ER 461; contrast *Family Housing Association v Donellan* [2001] All ER (D) 156 (Jul).

17 See *Local Authorities Mutual Investment Trust v Customs and Excise Comrs* [2003] EWHC 2766 (Ch), [2004] STC 246, [2003] All ER (D) 309 (Nov).

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914 Impact of the Human Rights Act 1998

NOTE 15--*Ofulue*, cited, reported at [2008] 3 WLR 1253.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1.
 STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/ (2) APPLICATION OF THE LIMITATION ACTS/(i)
 Proceedings to which the Limitation Acts Apply/915. Claims.

(2) APPLICATION OF THE LIMITATION ACTS

(i) Proceedings to which the Limitation Acts Apply

915. Claims.

The Limitation Act 1980 applies to all the classes of claim for which a period of limitation is laid down by the Act¹, except claims for which a special period of limitation is provided by some other enactment². 'Claim' includes any proceeding in a court of law, including an ecclesiastical court³. This definition is wide enough to include a set-off or counterclaim⁴, any form of initiating process (including a creditor's petition to wind up a company)⁵, and an application in the course of a winding up for a declaration that a director of a company is to make a contribution to the company's assets⁶. It also comprises some proceedings, for example an application for a distress warrant for arrears of rates, which are not claims in the ordinary sense of the word⁷. It does not, however, cover the issue of an execution on a judgment, as distinct from a claim to enforce a judgment⁸; nor does it cover most criminal proceedings⁹.

1 Limitation Act 1980 s 1(1). The statutory wording is 'action', not 'claim'. In this title, 'claim' has been substituted for 'action' in order to reflect the current practice under the Civil Procedure Rules (the 'CPR') (see **CIVIL PROCEDURE** vol 11 (2009) PARA 18), but the phrases 'right of action' and 'cause of action', which are still in general use, are retained. As to the various classes of claim see: the Limitation Act 1980 s 2 (tort: see PARA 979); s 4A (defamation or malicious falsehood: see PARA 996); s 5 (simple contract: see PARA 956); s 7 (enforcement of awards: see PARA 974); s 8 (specialties: see PARA 975); s 9 (recovery of sums recoverable by statute: see PARA 1005); s 11 (negligence, nuisance or breach of duty where damages include personal injury: see PARA 998 et seq); s 11A (defective products: see PARA 1003); s 12 (Fatal Accidents Act 1976: see PARA 1000 et seq); s 15 (recovery of unregistered land: see PARA 1025 et seq); s 16 (redemption in the case of unregistered land: see PARA 1129); s 19 (recovery of rent: see PARA 1033); s 19A (breach of commonhold duty: see PARA 1015); s 20 (recovery of money secured by mortgage, charge or proceeds of sale of land: see PARA 1105 et seq); s 21 (trust property: see PARA 1140 et seq); s 22 (personal estate of deceased person: see PARA 1161 et seq); s 23 (accounts: see PARA 1008); s 24 (judgments: see PARA 1010); ss 27A, 27B (certain claims for the recovery of property under the Proceeds of Crime Act 2002: see PARAS 1014-1015). As to specific exclusions from the operation of the Limitation 1980 Act see s 36; s 37(2); and PARAS 903, 954. Further, the 1980 Act does not apply to proceedings for which no period of limitation is prescribed under its provisions: see PARA 918.

2 See the Limitation Act 1980 s 39; and PARA 918.

3 Limitation Act 1980 s 38(1); and see note 1. As to courts of law see generally **COURTS** vol 10 (Reissue) PARA 306 et seq. 'Claim' for the purpose of the Limitation (Enemies and War Prisoners) Act 1945 means civil proceedings before any court or tribunal and includes arbitration proceedings: see s 2(1); and PARA 1232.

4 For special provisions as to set-offs and counterclaims see the Limitation Act 1980 s 35(3); and PARA 944.

5 *Re Karnos Property Co Ltd* [1989] BCLC 340; *Re Cases of Taffs Wells Ltd* [1992] Ch 179.

6 See under the Insolvency Act 1986 s 214(1). See *Re Farmizer (Products) Ltd, Moore v Gadd* [1997] 1 BCLC 589, [1997] BCC 655, CA.

7 See *China v Harrow UDC* [1954] 1 QB 178, [1953] 2 All ER 1296, DC; and **DISTRESS** vol 13 (2007 Reissue) PARA 1104. Note that the common law right to distrain for arrears of rent is prospectively abolished by the Tribunals, Courts and Enforcement Act 2007 s 71, as from a day to be appointed under s 148(5); for prospective new statutory powers of rent recovery see ss 72-87 (not yet in force).

8 *WT Lamb & Sons v Rider* [1948] 2 KB 331, [1948] 2 All ER 402, CA (applied in *Lowsley v Forbes (t/a L E Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL; and *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd*

[2005] EWCA Civ 92, [2005] 2 All ER 304, [2005] 1 WLR 2871); *National Westminster Bank plc v Powney* [1991] Ch 339, [1990] 2 All ER 416, CA; *Re a Debtor* (No 50A-SD-1995) [1997] Ch 310, [1997] 2 All ER 789. See further PARA 1010 note 1; and **CIVIL PROCEDURE**. As to claims to enforce judgments generally see PARA 1010 et seq.

9 'Claim' (or 'action': see note 1) when used in an Act does not normally include criminal proceedings: see eg *A-G v Bradlaugh* (1885) 14 QBD 667 at 687, CA. As to the limitation of time in criminal proceedings see generally **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1047.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/ (2) APPLICATION OF THE LIMITATION ACTS/(i) Proceedings to which the Limitation Acts Apply/916. Claims against estates of deceased persons.

916. Claims against estates of deceased persons.

The Limitation Act 1980 applies to claims against the estates of deceased persons or their personal representatives¹ other than claims for which a special period of limitation is prescribed by any other enactment². Express provision is made as to the limitation of claims for the personal estate of a deceased person³.

1 See the Limitation Act 1980 s 22. 'Personal estate' does not include chattels real: s 38(1). As to the limitation of claims against personal representatives generally see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 828. As to the effect of an acknowledgment or part payment by one of several personal representatives see the Limitation Act 1980 s 31(8); and PARA 1216. See further **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 392 (a representative's right to pay statute-barred debts); **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 394-395 (acknowledgments and part payments); **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 396 (running of time against creditor).

2 See the Limitation Act 1980 s 39; and PARA 918. For examples of enactments making special provision for limitation in this context see the Inheritance (Provision for Family and Dependants) Act 1975 s 4 (six months from representation or with permission of the court); and the Inheritance Tax Act 1984 s 240 (six years from the later of the dates set out in s 204(2) or, in any case of fraud, wilful default or neglect, six years beginning when the fraud, default or neglect comes to the knowledge of the Commissioners for Revenue and Customs).

3 See the Limitation Act 1980 s 22; and PARA 1161.

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917. Arbitrations.

The Limitation Act 1980, the Foreign Limitation Periods Act 1984 and any other enactment relating to the limitation of claims¹ apply to arbitrations as they apply to any legal proceedings². Arbitrations for this purpose include not only those pursuant to an arbitration agreement³ but also statutory arbitrations (those made under an enactment)⁴.

The parties are free to agree when arbitral proceedings are to be regarded as commenced for the purposes of the Limitation Acts⁵. If there is no such agreement, proceedings are commenced at the following times:

- 17 (1) where the arbitrator is named or designated in the arbitration agreement, when one party serves on the other party or parties a notice in writing requiring him or them to submit that matter to the person so named or designated⁶;
- 18 (2) where the arbitrator or arbitrators are to be appointed by the parties, when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter⁷;
- 19 (3) where the arbitrator or arbitrators are to be appointed by a person other than a party to the proceedings, when one party gives notice in writing to that person requesting him to make the appointment in respect of that matter⁸.

In determining for the purposes of the Limitation Acts when a cause of action accrued, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which an arbitration agreement applies⁹ is to be disregarded¹⁰ and the cause of action will be deemed to have accrued at the time when it would have accrued but for that term in the agreement. Payment of unascertained compensation, however, may not be due until the amount has been ascertained by arbitration¹¹. Where the High Court orders that an award be set aside or that an arbitration is to cease to have effect, it may direct that the period between the commencement of the arbitration and the date of its order is to be excluded in computing any statutory period of limitation¹².

Contractual time limits for arbitration agreements are likely to be disapplied where the parties agree to forgo arbitration and to proceed direct to litigation instead¹³.

Without prejudice to any statutory period of limitation, where an arbitration agreement to refer future disputes to arbitration provides that a claim will be barred, or the claimant's right extinguished, unless the claimant takes within a time fixed by the agreement some step either to begin arbitral proceedings or to begin other dispute resolution procedures which must be exhausted before arbitral proceedings can be begun, the court¹⁴ may by order extend the time for taking that step¹⁵. The court may make such an order only if satisfied either that the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question, and that it would be just to extend the time, or that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question¹⁶.

A claim to enforce an arbitral award is subject to the same rules of limitation as any other claim on a contract¹⁷.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 Arbitration Act 1996 s 13(1), (4). The application of the Limitation Acts has effect notwithstanding any agreement to the contrary: see the Arbitration Act 1996 s 4(1), Sch 1. The provisions of the 1996 Act do not apply to arbitration under the County Courts Act 1984 s 64 (small claims arbitration): Arbitration Act 1996 s 92. As to the principle that the Limitation Act 1980 does not apply to any claim or arbitration for which a period of limitation is prescribed by any other enactment see the Limitation Act 1980 s 39; and PARA 918.

3 'Arbitration agreement' means a written agreement to submit present or future disputes to arbitration, whether they are contractual or not: see the Arbitration Act 1996 ss 5, 6; and **ARBITRATION** vol 2 (2008) PARAS 1213-1218.

4 See the Arbitration Act 1996 s 94(1). In the application of the Limitation Act 1980 to statutory arbitrations, the provisions prescribing periods of limitation in particular cases must be construed on the footing that 'claim' and 'cause of action' include arbitration and cause of arbitration: *Pegler v Great Western Rly Co* [1947] 1 All ER 355, CA (affd sub nom *Pegler v Railway Executive* [1948] AC 332, [1948] 1 All ER 559, HL) (claim for statutory compensation by transferred officer). In the case of a claim for a sum less than £3,000, referral to arbitration is automatic without the need of an order to that effect: see *Greig Middleton & Co Ltd v Denderowicz (No 2)* (1997) Times, 28 July, CA.

5 Arbitration Act 1996 s 14(1). In *Seabridge Shipping AB v AC Orssleff's Eftf's A/S* [1999] 2 Lloyd's Rep 685, [2000] 1 All ER (Comm) 415, however, Thomas J expressed the opinion that it was difficult to see why it should have been intended that methods for commencing an arbitration other than those set out in the Arbitration Act 1996 s 14 be permitted, given that the Act is intended for use by lay persons and is written in user-friendly language capable of application by international traders and business people, that s 14 is clearly expressed, easy to follow and apply, and provides for certainty and that the requirements of the law are readily ascertainable from s 14 without the need for reference to pre-1996 authorities. See also *Taylor Woodrow Construction v RMD Kwikform Ltd* [2008] EWHC 825 (TCC), [2008] All ER (D) 274 (Apr).

6 Arbitration Act 1996 s 14(2), (3).

7 Arbitration Act 1996 s 14(2), (4). Section 14 is to be interpreted broadly and flexibly; notices are given by international traders and business people who often use shorthand expressions and ways of doing things which are, nevertheless, objectively clear in giving notice to the other party of a reference and of the requirement to appoint an arbitrator: see *Seabridge Shipping AB v AC Orssleff's Eftf's A/S* [1999] 2 Lloyd's Rep 685, [2000] 1 All ER (Comm) 415 (notice sent by fax sent by an effective means; plainly notice to the owners within the Arbitration Act 1996 s 14(4)). Contrast *Taylor Woodrow Construction v RMD Kwikform Ltd* [2008] EWHC 825 (TCC), [2008] BLR 383, [2008] All ER (D) 274 (Apr) (the statement 'Please confirm whether you wish to ... insist on proceedings by way of arbitration, or would be agreeable to the matter being litigated' held not to be notice of arbitration).

8 Arbitration Act 1996 s 14(2), (5).

9 Is an arbitration clause in the form adopted in *Scott v Avery* (1856) 5 HL Cas 811: see **ARBITRATION** vol 2 (2008) PARA 1222.

10 Arbitration Act 1996 s 13(3). It had been held in *Board of Trade v Cayzer, Irvine & Co* [1927] AC 610, HL, that no cause of action accrued until the arbitrator had made his award, and that time began to run only from the making of the award: this was altered by the Arbitration Act 1934 s 16(2) (since repealed) and subsequent Limitation Acts. As to when time begins to run in a claim to enforce an award see PARA 974.

11 See *Turner v Midland Railway Co* [1911] 1 KB 832; *Cheshire County Council v Hopley* (1923) 130 LT 123, DC. As to compensation on quitting an agricultural holding see **AGRICULTURAL LAND** vol 1 (2008) PARAS 418-423.

12 Arbitration Act 1996 s 13(2). See *Stockport Metropolitan Borough Council v O'Reilly* [1983] 2 Lloyd's Rep 70, QBD; and **ARBITRATION** vol 2 (2008) PARA 1221.

13 See *Indian Oil Corp'n v Vanol Inc* [1992] 2 Lloyd's Rep 563, CA.

14 'The court' means the High Court or a county court: Arbitration Act 1996 s 105(1).

15 Arbitration Act 1996 s 12(1). Section 12 does not apply to statutory arbitration: s 97(b). As to extension of time under the previous legislation see *Comdel Commodities Ltd v Siporex Trade SA (No 2)* [1991] 1 AC 148, [1990] 2 All ER 552, HL.

16 Arbitration Act 1996 s 12(3). On its true construction, s 12(3) precludes the court from interfering with a contractual bargain unless the circumstances are such that the parties would, at the very least, have contemplated that the time bar might not apply if those circumstances had been drawn to their attention when

they had agreed the provision. If they had so contemplated, it is then for the court to rule whether justice requires giving an extension: *Harbour and General Works Ltd v Environment Agency* [2000] 1 All ER 50, [2000] 1 WLR 950, CA.

17 See the Limitation Act 1980 s 7; and PARAS 952, 975. It is an implied term of an agreement to submit to arbitration disputes arising under a contract that any award will be honoured and a breach of that implied term will give rise to an independent cause of action which is distinct from the original cause of action: *Agromet Motoimport v Maulden Engineering Co (Beds) Ltd* [1985] 2 All ER 436, [1985] 1 WLR 762.

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917 Arbitrations

NOTE 17--See *National Ability SA v Tinnco Oils & Chemicals Ltd, The Amazon Reefer* [2009] EWCA Civ 1330, [2010] 1 Lloyd's Rep 222, [2009] All ER (D) 109 (Dec) (decided in relation to Arbitration Act 1950 s 26 (repealed)).

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(ii) Proceedings to which the Limitation Acts do not Apply

918. Restrictions on application of the Limitation Act 1980.

The Limitation Act 1980 does not apply to any claim¹ or arbitration for which a period of limitation is prescribed by or under any other enactment², or to any claim or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any other enactment³. Proceedings by the Crown for the recovery of taxes or duties⁴ or interest on them and certain proceedings for forfeitures are expressly excluded from the operation of the 1980 Act⁵. The Act does not apply to the issue of executions on judgments⁶, to criminal proceedings⁷ or to the exercise of the court's jurisdiction over solicitors⁸, or to proceedings for which no period of limitation is laid down by the Act, such as probate proceedings⁹, or matrimonial proceedings¹⁰ or applications for judicial review¹¹. However, where the making of an order or the granting of a remedy is a matter of the court's discretion, delay on the part of the claimant may serve to bar the claim by virtue of the equitable doctrine of unconscionable delay ('laches')¹².

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 Limitation Act 1980 s 39. Section 39 applies in the case of any other prescribing enactment, whether passed before or after the passing of the 1980 Act: s 39. As to Acts prescribing special time limits in particular cases see generally PARA 908 et seq. As to the time limits for personal injury claims see PARA 998 et seq; and as to proceedings under the Fatal Accidents Act 1976 see PARA 1000 et seq.

3 Limitation Act 1980 s 39.

4 As to the meaning of 'duty' see PARA 903 note 2.

5 See the Limitation Act 1980 s 37(2); and PARA 903.

6 Despite the wide definition of 'claim' contained in s 38(1), the time limit on enforcement of judgments set out in s 24 (see PARA 1010) only applies to the enforcement of judgments by suing on them and does not apply to the issue of executions on judgments for which leave of the court is required, after six years have elapsed, by CPR Sch 1 RSC Ord 46 r 2(1)(a): see *WT Lamb & Sons v Rider* [1948] 2 KB 331, [1948] 2 All ER 402, CA; applied in *Lowsley v Forbes (t/a LE Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL. See also PARAS 915, 1010-1012.

7 'Claim' (or 'action') when used in an Act does not normally include criminal proceedings: see eg *A-G v Bradlaugh* (1885) 14 QBD 667 at 687, CA.

8 See *Bray v Stuart A West & Co* [1989] NLJR 753. See also *Nelson v Rye* [1996] 2 All ER 186, [1996] 1 WLR 1378 (no limitation period following breach of fiduciary duty to account by manager retained to organise and administer musician's affairs, as matter either fell outside the Limitation Act 1980 entirely or within s 21(1)(b), as to which see PARA 1140), disapproved in *Coulthard v Disco Mix Club Ltd* [1999] 2 All ER 457, [2000] 1 WLR 707 (a simple duty to account is not a fiduciary duty, even when owed by a person in a fiduciary position; it is merely a contractual duty the breach of which gives rise to a contractual claim subject to the Limitation Act 1980 s 5 (see PARA 956)).

9 See *Re Coghlan, Briscoe v Broughton* [1948] 2 All ER 68, CA, where it was held that what would have amounted to unconscionable delay ('laches') in equitable proceedings did not bar proof of a will in a probate claim.

10 However, the Limitation (Enemies and War Prisoners) Act 1945 does apply in relation to the Nullity of Marriage Act 1971 s 3(2) (repealed), the Matrimonial Causes Act 1973 s 13(2), Sch 1 para 11(3) or the Civil Partnership Act 2004 s 51(2): see the Limitation (Enemies and War Prisoners) Act 1945 s 2(1) (amended for these purposes by the Nullity of Marriage Act 1971 s 7(2); the Matrimonial Causes Act 1973 Sch 2 para 2; and the Civil Partnership Act 2004 Sch 27 para 11); and PARA 1232 note 1.

11 The claim form for an application for judicial review must be filed with the court promptly, and in any event within three months from the date after the grounds to make the claim first arose: CPR 54.5(1). The court may refuse to grant (1) leave to make an application for judicial review; or (2) any relief sought on the application, if it considers there has been undue delay in making the application for judicial review and that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration: see the Supreme Court Act 1981 s 31(6); and see eg *R v Independent Television Commission, ex p TV NI Ltd* (1991) Times, 30 December, CA; *R v Bradford Metropolitan Borough Council, ex p Sikander Ali* (1993) Times, 21 October, [1994] ELR 299; and *R v Education Appeal Committee of Leicestershire County Council, ex p Tarmohamed* [1997] ELR 48. As from a day to be appointed under the Constitutional Reform Act 2005 s 148(1), the Supreme Court Act 1981 is retitled the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1 (not yet in force). As to judicial review see generally **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

12 See *Bray v Stuart A West & Co* [1989] NLJR 753; and PARA 906.

UPDATE

918 Restrictions on application of the Limitation Act 1980

NOTE 11--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/ (2) APPLICATION OF THE LIMITATION ACTS/(ii) Proceedings to which the Limitation Acts do not Apply/919. Claims for equitable relief.

919. Claims for equitable relief.

The provisions prescribing limitation periods for claims in contract and tort and certain other claims¹ do not apply to a claim for specific performance of a contract or for an injunction or other equitable relief, except in so far as any time limit may be applied by analogy with the provisions of the Limitation Act 1980, in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1 July 1940². Where the same facts which are relied on for alleging breach of contract or breach of duty in tort are also relied on for alleging breach of fiduciary duty, the Limitation Act 1980 will apply to the claim in equity³. By contrast, claims for specific performance fall outside the principle that where a remedy in equity is correspondent to a remedy at law, and the latter subject to a statutory limitation period, a court of equity will act by analogy and impose on the remedy it affords the same limitation; specific performance is available in circumstances where no cause of action exists at law, so the factual circumstances giving rise to a claim do not need to be the same as those which would support a claim for breach of contract, and no comparable remedy is available at law⁴.

Nothing in the Limitation Act 1980 affects any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise⁵.

1 The Limitation Act 1980 s 2 (tort); s 4A (defamation and malicious falsehood); s 5 (contract); s 7 (enforcement of awards); s 8 (specialties); s 9 (recovery of sums recoverable by virtue of an enactment); s 11 (personal injuries); s 11A (defective products); and s 24 (enforcement of judgments): see PARA 952 et seq.

2 See the Limitation Act 1980 s 36(1) (amended by the Administration of Justice Act 1985 s 57(5); and by the Defamation Act 1996 s 5(1), (5), (6)); and PARA 954. Under the Limitation Act 1980 s 36(1), the court is not looking to see whether a limitation period was actually applied to a dishonest breach of fiduciary duty by analogy before 1 July 1940, but looking to see whether it would have been applied; it might, for example, have been so obvious that in a claim for 'equitable damages' equity would follow the law and apply the statutes of limitation by analogy that one could not in fact find an authority precisely in point. Thus what the court must do is act in like manner to a court sitting prior to 1 July 1940: *Cia de Seguros Imperio v Heath (REBX) Ltd (formerly CE Heath & Co (North America) Ltd)* [2000] 2 All ER (Comm) 797 at 795, [2001] 1 WLR 112 at 120, CA, per Waller LJ.

3 *Cia de Seguros Imperio v Heath (REBX) Ltd (formerly CE Heath & Co (North America) Ltd)* [2000] 2 All ER (Comm) 797, [2001] 1 WLR 112, CA, overruling *Kershaw v Whelan (No 2)* (1997) Times, 10 February, (1997) 141 Sol Jo LB 37.

4 See *P & O Nedlloyd BV v Arab Metals Co* [2006] EWCA Civ 1717, [2007] 2 All ER (Comm) 401, [2007] 1 WLR 2288.

5 Limitation Act 1980 s 36(2).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(i) When Time begins to Run/920. Accrual of cause of action; computation of time.

(3) THE RUNNING OF TIME

(i) When Time begins to Run

920. Accrual of cause of action; computation of time.

In general, periods of limitation under the Limitation Act 1980 begin to run when the cause of action¹ accrues². In computing the period of limitation, the day on which the cause of action arose is excluded³. When the court office is closed on the last day of the period of limitation set, the time limit is extended to the first day on which the office reopens⁴. However, this is so only where the act of the claimant which will stop the running of time requires some co-operation or act by the court or tribunal. This is clearly the case in relation to the issue of a claim form. Proceedings are started when the court issues a claim form at the request of the claimant⁵ but where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court⁶, the claim is 'brought' for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date⁷. Parties proposing to start a claim which is approaching the expiry of the limitation period are advised to recognise the potential importance of establishing the date the claim form was received by the court and to make arrangements themselves to record the date⁸. When the court issues a claim form following the submission of an online claim form using Money Claim Online, the claim is 'brought' for the purposes of the Limitation Act 1980 and any other enactment on the date on which the online claim form is received by the court's computer system and the court will keep a record, by electronic or other means, of when online claim forms are received⁹. Where, however, the claimant is required merely to 'present' his complaint to a tribunal, the running of time will be stopped by the mere placing of the complaint in the letter box of the tribunal¹⁰.

Apart from any special provision¹¹, a cause of action normally accrues when there is in existence a person who can sue and another who can be sued¹², and when there are present all the facts which are material to be proved to entitle the claimant to succeed¹³.

In personal injury claims time begins to run from the date of the claimant's 'knowledge', if later than the date on which the cause of action accrued¹⁴.

Under the statutory provisions which enable a tortfeasor to recover contribution from any other person who is liable in respect of the same damage¹⁵, a cause of action for contribution does not arise until judgment has been given against the tortfeasor seeking contribution by the party injured by the tort or an award is made in an arbitration, or, alternatively, payment in compensation for the damage has been made or agreed to be made¹⁶. No claim to recover such contribution may be brought after the expiration of two years from the date on which that right accrued¹⁷. The cause of action of one demanding indemnification runs from the date of judicial ascertainment of that person's own liability to another¹⁸. For the purposes of insurance policies, time begins to run from the date of the occurrence of the insured peril¹⁹.

In certain circumstances a cause of action may be complete so that time begins to run, even though the claim itself cannot be brought because of some reason not part of the cause of action²⁰.

Once there has been a complete cause of action arising out of contract or tort, time begins to run, and subsequent circumstances which, but for the prior wrongful act of default, would have constituted a cause of action are disregarded²¹.

A cause of action in respect of a breach of the duty to build dwellings properly²² is deemed to have accrued at the time when the dwelling was completed, but if after that time a person who has done work for or in connection with the provision of the dwelling does further work to rectify the work he has already done, any cause of action in respect of that further work is deemed to have accrued at the time when the further work was finished²³.

The running of time when there are recurring causes of action is considered subsequently²⁴, as is the date from which time runs in respect of particular causes of action in relation to the causes of action in question²⁵.

1 As to the meaning of 'claim', and the phrase 'cause of action', see PARA 915.

2 See eg the Limitation Act 1980 s 2 (tort), s 5 (simple contract), s 8 (claims upon specialties), s 11 (claims for damages for negligence, nuisance or breach of duty where the damages claimed consist of or include damages in respect of personal injuries to the claimant or any other person), s 12 (claims under the Fatal Accidents Act 1976), s 15 (claims to recover land), s 21 (trust property). As to these particular causes of action see PARA 952 et seq. As to the principle that a cause of action is deemed to have accrued afresh in the case of an acknowledgment or part payment see s 29; and PARA 1181 et seq. As to the effect of fraud or mistake in postponing the commencement of the limitation period see s 32; and PARA 1220 et seq.

3 *Marren v Dawson Bentley & Co Ltd* [1961] 2 QB 135, [1961] 2 All ER 270; *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899, [1967] 1 All ER 19 (not following *Gelmini v Moriggia* [1913] 2 KB 549). Cf specific enactments in the employment context: eg the Employment Rights Act 1996 s 111(2) (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a)) (a complaint of unfair dismissal to an employment tribunal will not be considered unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or within such further period as the tribunal considers reasonable); and the Trade Union and Labour Relations (Consolidation) Act 1992 s 239(2) (as so amended; also amended by the Employment Relations Act 1999 Sch 5 paras 1, 4(1), (4); the Employment Rights Act 1996 Sch 1 para 56(1), (16)). For the purposes of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, where any act must or may be done within a certain number of days of or from an event, the date of that event is not included in the calculation (reg 15(2)) and where any act must or may be done not less than a certain number of days before or after an event, the date of that event is not included in the calculation (reg 15(3)). See also **EMPLOYMENT** vol 40 (2009) PARA 757.

4 *Pritam Kaur v S Russell & Sons Ltd* [1973] QB 336, [1973] 1 All ER 617, CA, where the time was extended from a Saturday to the following Monday. As to the joinder of parties after the end of a period of limitation see CPR 19.5; and PARA 937.

5 See CPR 7.2; and PARA 929.

6 The date on which the claim form was received by the court will be recorded by a date stamp either on the claim form held on the court file or on the letter that accompanied the claim form when it was received by the court: *Practice Direction--How to Start Proceedings--The Claim Form* PD 7 para 5.2.

7 *Practice Direction--How to Start Proceedings--The Claim Form* PD 7 para 5.1; and see *Barnes v St Helen's Metropolitan Borough Council* [2006] EWCA Civ 1372, [2007] 3 All ER 525, [2006] All ER (D) 303 (Oct); applied in *Secretary of State for Trade and Industry v Vohora* [2007] EWHC 2656 (Ch), (2007) Times, 10 December, [2007] All ER (D) 256 (Nov).

8 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7 para 5.4. An inquiry as to the date on which the claim form was received by the court should be directed to a court officer: para 5.3.

9 See *Practice Direction--Money Claim Online* PD 7E para 5.5. Similar provision is made where a possession claim is started online: see *Practice Direction--Possession Claims Online* PD 55B para 6.6; PARA 929; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 661.

10 See *Swainston v Hetton Victory Club Ltd* [1983] 1 All ER 1179 (presentation of complaint under the Employment Protection (Consolidation) Act 1978 s 67(2) (repealed): see now the Employment Rights Act 1996 s 111(2)).

11 Eg the provisions as to the accrual of rights of action to recover land: see the Limitation Act 1980 Sch 1; and PARA 1034 et seq.

12 As to the need for the existence of a person capable of suing and a person capable of being sued see PARA 922. See also *Awoyami v Radford* [2007] EWHC 1671 (QB), [2008] 3 WLR 34, [2007] All ER (D) 183 (Jul) (time

ran from the date of the conduct in question; the removal of an advocate's immunity from suit by the House of Lords in 2000 had retrospective effect; thus the defendants were not immune from suit in 1995 and the claim was statute-barred).

13 See *Cooke v Gill* (1873) LR 8 CP 107 at 116 per Brett J; *Read v Brown* (1888) 22 QBD 128, CA; *Sevcon Ltd v Lucas CAV Ltd* [1986] 2 All ER 104, [1986] 1 WLR 462, HL. Some positive act is frequently needed to be proved to complete a cause of action. Thus, where shares in a company are invalidly transferred, the cause of action against the company to have the claimant's name replaced on the register of shares is not complete until the company has refused to replace the name; similarly a partner who takes no part in the partnership for six years does not lose his remedy against his partners until they commit an act of exclusion: see *Barton v North Staffordshire Rly Co* (1888) 38 ChD 458 at 463; *Welch v Bank of England* [1955] Ch 508 at 543-546, [1955] 1 All ER 811 at 828-830. As to partners see PARA 1009. As to the transfer of shares see **COMPANIES** vol 14 (2009) PARAS 389 et seq, 420 et seq. As to the position where damage is part of the cause of action see PARA 921.

14 See the Limitation Act 1980 ss 11(4), 14; and PARA 998 et seq.

15 See the Civil Liability (Contribution) Act 1978 s 1.

16 See the Limitation Act 1980 s 10(2), (3), (4); and PARAS 1006-1007.

17 Limitation Act 1980 s 10(1).

18 See the Limitation Act 1980 s 10(3). See also *Bradley v Eagle Star Insurance Co Ltd* [1989] AC 957, [1989] 1 All ER 961, HL; *County and District Properties Ltd v C Jenner & Son Ltd* [1976] 2 Lloyd's Rep 728; *Post Office v Norwich Union Fire Insurance Society Ltd* [1967] 2 QB 363, [1967] 1 All ER 577, CA; and *R & H Green Ltd and Silley Weir Ltd v British Railways Board* [1985] 1 All ER 237, [1985] 1 WLR 570n.

19 See *Bank of America National Trust and Savings Association v Christmas, The Kyriaki* [1994] 1 All ER 401, [1993] 1 Lloyd's Rep 137; *Callaghan v Dominion Insurance Co Ltd* [1997] 2 Lloyd's Rep 541, (1997) Times, 14 July; *Universities Superannuation Scheme Ltd v Royal Insurance (UK) Ltd* [2000] 1 All ER (Comm) 266; *Mulchrone v Swiss Life (UK) Ltd* [2005] EWHC 1808 (Comm), [2006] Lloyd's Rep IR 339, [2005] All ER (D) 283 (Jul).

20 See *Coburn v Colledge* [1897] 1 QB 702 at 706-707, 709-710, CA, where a solicitor's 'cause of action' for his costs was held complete as soon as the work was done, although there was a statutory bar of a month from the date on which a bill of costs had been delivered before he could issue a writ (see now the Solicitors Act 1974 s 69(1); and **LEGAL PROFESSIONS** vol 66 (2009) PARA 956). In a claim for false imprisonment against justices for exceeding their jurisdiction, the cause of action is complete at the date of the false imprisonment and not when the conviction is quashed: *O'Connor v Isaacs* [1956] 2 QB 288, [1956] 2 All ER 417, CA. Similarly a cause of action for conversion arises when a car is stolen and not when the identity of the thief is discovered or the car found: see *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226; and PARA 987 et seq. See also *Central Electricity Board v Halifax Corp'n* [1963] AC 785, [1962] 3 All ER 915, HL, where a minister's decision provided evidence of a fact essential to the cause of action but was not a condition precedent in its accrual; *Sevcon Ltd v Lucas CAV Ltd* [1986] 2 All ER 104, [1986] 1 WLR 462, HL, where it was held that a claim for breach of patent accrued upon infringement, notwithstanding that, at that date, the patent had merely been applied for but not granted and, under the Patents Act 1949 s 13(4) (repealed: see now the Patents Act 1977 s 69(2); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARAS 505, 521, 548), any infringement was not at that time actionable.

21 *Wilkinson v Verity* (1871) LR 6 CP 206 at 209. Where, however, there is repudiation of a contract to be performed on a future day and the injured party, instead of exercising his right to treat the contract as at an end, elects to treat the contract as subsisting (see **CONTRACT** vol 9(1) (Reissue) para 1002), it seems that time runs against the right of the injured party to sue for non-performance only from the time fixed for performance: *Wilkinson v Verity*. It seems that the actual decision in *Wilkinson v Verity* can no longer be regarded as authoritative, in so far as it decided that in a claim for conversion or breach of contract against a bailee, time runs from a demand from the bailor for the goods and not from a previous conversion of them by his bailee.

22 See the duty to see that the work a person takes on for or in connection with the provision of a dwelling is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that as regards that work the dwelling will be fit for habitation when completed: Defective Premises Act 1972 s 1(1).

23 Defective Premises Act 1972 s 1(5). See also **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) para 77.

24 See PARAS 921, 988.

25 See eg PARAS 958-959 (simple contract), 977 (specialties), 980 et seq (tort), 1008 (account).

UPDATE

920 Accrual of cause of action; computation of time

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 12--*Awoyami*, cited, reported at [2008] 1 QB 793.

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921. Where damage is part of cause of action.

Where damage is the cause of action or part of the cause of action, as for example with negligence, the period of limitation runs from the date of the damage and not of the act which causes the damage¹. Time will normally run from the date of damage, regardless of whether or not that damage could have been discovered within the limitation period². Where the cause of action is in negligence (other than personal injury claims), an alternative three-year limitation period, running from the date of discoverability of the damage, is provided for³.

Where there has been a continuance of the damage, a fresh cause of action arises from time to time, as often as damage is caused⁴. For example, if the owner of mines works them and causes damage to the surface more than six years before claim, and within six years of claim a fresh subsidence causing damage occurs without any fresh working by the owner, a claim in respect of the fresh damage is not barred, as the fresh subsidence resulting in injury gives a fresh cause of action⁵. If in such a case the subsidence causing damage is continuous, there is a continuing cause of action as long as the subsidence continues⁶.

1 *Backhouse v Bonomi* (1861) 9 HL Cas 503; *Whitehouse v Fellowes* (1861) 10 CBNS 765; *Hodsden v Harris* (1670) 2 Wms Saund (1871 Edn) 150 at 166 note (q); *Lloyd v Wigney* (1830) 6 Bing 489; *Wordsworth v Harley* (1830) 1 B & Ad 391; *Roberts v Read* (1812) 16 East 215; *Gillon v Boddington* (1824) Ry & M 161; *Howell v Young* (1826) 5 B & C 259; and see **DAMAGES** vol 12(1) (Reissue) PARA 834 et seq. As to the date from which time runs in the case of a claim for negligence amounting to a breach of a contractual duty see PARA 984. In claims upon a negligent valuation time runs from the date of damage; as to the date at which damage is held to have occurred and the scope of damage for which a party is responsible see *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191, [1996] 3 All ER 365, HL.

As to provision where damage is part of the cause of action in relation to defective products see the Consumer Protection Act 1987 s 5(5)-(7); the Limitation Act 1980 s 11A(4); and PARAS 1003-1004.

2 *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1, [1983] 1 All ER 65, HL, overruling *Sparham-Souter v Town and Country Developments (Essex) Ltd* [1976] QB 858, [1976] 2 All ER 65, CA. However, *Pirelli General Cable Works Ltd v Oscar Faber & Partners* is no longer regarded as general authority where there is neither a professional relationship between the parties nor a special relationship amounting to reliance: see *Nitrigin Eireann Teoranta v Inco Alloys Ltd* [1992] 1 All ER 854, [1992] 1 WLR 498. Where there is latent damage, special periods of limitation now apply by virtue of the Latent Damage Act 1986: see PARA 982. This mitigates the harshness which might otherwise arise from the decision in *Pirelli General Cable Works Ltd v Oscar Faber & Partners*.

'Damage' means physical damage and not a defect in the original construction of a building: *Kensington and Chelsea and Westminster Area Health Authority v Wettern Composites Ltd* [1985] 1 All ER 346; *Ketteman v Hansel Properties Ltd* [1987] AC 189, [1988] 1 All ER 38, HL; *London Congregational Union Inc v Harriss & Harriss* [1988] 1 All ER 15, CA. The possible exception to the general rule, ie that if a building is 'doomed from the start' then the date of accrual is the date of the completion of the building, does not apply merely because a latent defect makes it inevitable in the ordinary course of events that damage to the building will arise at some stage: see *Ketteman v Hansel Properties Ltd*; *London Congregational Union Inc v Harriss & Harriss*; and *Kensington and Chelsea and Westminster Area Health Authority v Wettern Composites Ltd*. See also *Dennis v Charnwood Borough Council* [1983] QB 409, [1982] 3 All ER 486, CA (defective foundations of house); *Dove v Banhams Patent Locks Ltd* [1983] 2 All ER 833, [1983] 1 WLR 1436 (defective security door forced by burglar; limitation period ran from date of burglary); *Abbott v Will Gannon & Smith Ltd* [2005] EWCA Civ 198, 103 ConLR 92, [2005] BLR 195 (cracks to the building); cf *Secretary of State for the Environment v Essex Goodman & Suggitt* [1986] 2 All ER 69, [1986] 1 WLR 1432 (defectively designed building; claimant entered into lease in reliance on surveyor's report; claimant's cause of action against surveyors, as distinct from architects and builders, accrued when claimant acted on report by entering into lease).

Hidden defective building work may constitute deliberate concealment which prevents time from running: see PARAS 1220, 1226 et seq.

3 See the Limitation Act 1980 s 14A (added by the Latent Damage Act 1986 s 1); and PARA 982.

4 *Whitehouse v Fellowes* (1861) 10 CBNS 765; *Battishill v Reed* (1856) 18 CB 696 at 714; *Devery v Grand Canal Co* (1875) IR 9 CL 194, Ex Ch; cf *Hart v St Marylebone Borough Council* (1912) 76 JP 257. See also **DAMAGES** vol 12(1) (Reissue) PARA 834.

5 *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL, overruling *Lamb v Walker* (1878) 3 QBD 389, DC; and see *West Leigh Colliery Co Ltd v Tunnicliffe and Hampson Ltd* [1908] AC 27, HL; *Durham County Council v South Medomsley Colliery Ltd (Owners)* (1916) 80 JP 343; and **DAMAGES** vol 12(1) (Reissue) PARA 834.

6 *Crumbie v Wallsend Local Board* [1891] 1 QB 503, CA; *Fairbrother v Bury Rural Sanitary Authority* (1889) 37 WR 544; *Hole v Chard Union* [1894] 1 Ch 293, CA.

UPDATE

921 Where damage is part of cause of action

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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922. Persons capable of suing or of being sued.

A cause of action cannot accrue unless there is someone in existence capable of instituting the claim¹ and another person in existence who can be sued². If a person is in such a position that, even if a claim were brought and judgment given against him, the judgment could not be enforced, a cause of action cannot accrue against him³.

1 *Murray v East India Co* (1821) 5 B & Ald 204 at 214 per Abbott CJ; *Meyappa Chetty v Supramanian Chetty* [1916] 1 AC 603 at 610, PC. See also *T v H* [1995] 3 NZLR 37 (qualifying the proposition set out in the text).

Special limitation provision is made in cases of incapacity through disability. Time does not begin to run for those under a disability: see the Limitation Act 1980 s 28. A person is considered to be under a disability while he is a minor or lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings: s 38(2) (amended by the Mental Capacity Act 2005 Sch 6 para 25(a)); and see PARA 1170. As to disability generally see PARAS 1170-1180.

An enemy alien has no standing to bring a claim before the English courts, and therefore no cause of action can accrue: *Sovfracht (V/O) v Van Udens Sheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203, [1943] 1 All ER 76, HL; and see generally **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 573 et seq. For statutory provisions providing for the suspension of limitation periods where a party has been an enemy see PARAS 1232-1234.

2 *Douglas v Forrest* (1828) 4 Bing 686 at 704 per Best CJ; *Re Russo-Asiatic Bank, Re Russian Bank for Foreign Trade* [1934] Ch 720, where a company had ceased to exist before bills drawn by it had matured.

The former immunity from suit of an advocate was removed by the House of Lords in 2000 with retrospective effect: see *Arthur JS Hall & Co (a firm) v Simons, Barratt v Ansell (t/a Woolf Seddon (a firm)), Harris v Scholfield Roberts & Hill (a firm)* [2002] 1 AC 615, [2000] 3 All ER 673, HL; *Awoyami v Radford* [2007] EWHC 1671 (QB), [2008] 3 WLR 34, [2007] All ER (D) 183 (Jul). That immunity did not prevent time from running: *Awoyami v Radford*.

3 *Musurus Bey v Gadban* [1894] 2 QB 352, CA (ambassador). As to diplomatic privileges and immunities see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 265 et seq. As to the principle that foreign states are not liable to be sued see the State Immunity Act 1978; and **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 242 et seq. Under the State Immunity Act 1978, however, there are various exceptions (see ss 2-11) to the general immunity of a state from the jurisdiction of the United Kingdom courts (see s 1). As to the meaning of 'United Kingdom' see PARA 910 note 1. As to the effect of a debtor's bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 647 et seq.

UPDATE

922 Persons capable of suing or of being sued

NOTE 2--*Awoyami*, cited, reported at [2008] 1 QB 793.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(i) When Time begins to Run/923. Accrual of cause of action on or after death.

923. Accrual of cause of action on or after death.

Where a cause of action¹ accrues on or after the date of death of a person and there is no executor, then if the claim is for the recovery of land the administrator is deemed to claim as if there had been no interval of time between the death and the grant of letters of administration², but if the claim is for personalty time does not begin to run until the grant is obtained³. If there is doubt whether the death or the accrual occurred first, the death will be presumed to have preceded the accrual⁴. Where the deceased has appointed an executor, time begins to run from the accrual of the cause of action, provided the executor acts or takes out probate⁵. If the probate is not granted within the relevant limitation period and no claim is begun before probate, the executor's claim is barred, but, if probate is granted within the period and later revoked and an administrator appointed, time does not run against the administrator until letters of administration are granted⁶.

1 As to the meaning of 'claim', and the phrase 'cause of action', see PARA 915.

2 Limitation Act 1980 s 26. This provision applies to any legal or equitable estate or interest in land, including leaseholds: see the definition of 'land' in s 38(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); cf *Re Williams, Davies v Williams* (1886) 34 ChD 558; *Re Scott and Alvarez's Contract, Scott v Alvarez* [1895] 1 Ch 596 at 605, CA. It seems, however, that the Limitation Act 1980 s 26 will not apply to claims to money charged on land, unlike the Real Property Limitation Act 1833 s 6 (since repealed and replaced by the Limitation Act 1980 s 26), which was differently worded and was held to apply to such claims: see *Re Bonsor and Smith's Contract* (1884) 34 ChD 560n.

3 *Sanders v Stanford* (1579) cited in Cro Jac 60; see also *Pratt v Swaine* (1828) 8 B & C 285; *Hyde v Price* (1837) Coop Pr Cas 193; *Cary v Stephenson* (1694) 2 Salk 421; *Murray v East India Co* (1821) 5 B & Ald 204; *Burdick v Garrick* (1870) 5 Ch App 233; *Chan Kit San v Ho Fung Hang* [1902] AC 257, PC; *Meyappa Chetty v Supramanian Chetty* [1916] 1 AC 603 at 608-609, PC.

4 *Atkinson v Bradford Third Equitable Building Society* (1890) 25 QBD 377, CA.

5 The executor's title derives from his appointment, and the grant of probate is a mere authentication of his title, but if he renounces probate the representation to the testator is committed in like manner as if he had never been appointed executor: Administration of Estates Act 1925 s 5(iii); and see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) para 27.

6 *Chan Kit San v Ho Fung Hang* [1902] AC 257, PC.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(ii) Time Running/924. When time continues to run.

(ii) Time Running

924. When time continues to run.

Subject to certain exceptions set out below, time which has once begun to run will as a rule continue to do so, even though subsequent events occur which make it impossible that a claim should be brought; this rule holds good with respect to all Limitation Acts¹.

Thus it seems that, if time has begun to run against a person entitled to sue, or in favour of a person capable of being sued, the fact of his death and that there is an interval between his death and the grant of administration does not prevent time from running against², or in favour of³, the administrator, as the case may be.

If, however, a debtor takes out administration to his creditor, this, being an act of law, suspends the remedy, and time ceases to run during the administration⁴. The limitation period does not cease to run where the creditor is appointed executor of the debtor⁵.

Where the court orders that an award or part of an award be set aside, or orders after the commencement of an arbitration that the award, or part of an award, is of no effect, it may further order that time is not to run between the commencement of the arbitration and the date of its order⁶.

If it is provided that a payment is to be irrecoverable for a certain period, there may be a consequence, in default of express statutory provision, that the running of time under the appropriate Limitation Act is suspended whilst that payment is irrecoverable⁷.

In respect of debts provable in bankruptcy, time ceases to run during the bankruptcy for the purpose of the bankruptcy proceedings, but will continue to run afresh if and when the bankruptcy is annulled⁸. In the case, however, of the bankruptcy of a creditor time runs against the trustee⁹.

The running of time may be suspended where, either contemporaneously with or subsequent to the date of accrual of the cause of action, the defendant deliberately conceals from the claimant any fact relevant to the claimant's cause of action¹⁰.

1 *Homfray v Scroope* (1849) 13 QB 509 at 512; *Smith v Hill* (1746) 1 Wils 134; *Doe d Duroure v Jones* (1791) 4 Term Rep 300; *Rhodes v Smethurst* (1838) 4 M & W 42 (affd (1840) 6 M & W 351, Ex Ch); *Howlett v Lambert* (1840) 2 I Eq R 254; *Skeffington v Whitehurst* (1837) 3 Y & C Ex 1 at 34 (on appeal sub nom *Skeffington v Budd* (1842) 9 Cl & Fin 219, HL); *Doe d Griggs v Shane* (1787) 4 Term Rep 306 note (b); *Stowel v Lord Zouch* (1569) 1 Plowd 353 at 366, Ex Ch; *Cotterell v Dutton* (1813) 4 Taunt 826; *Gray v Mendez* (1723) 1 Stra 556; *Wilcox v Huggins* (1730) 1 Barn KB 335, 382; (1731) 2 Barn KB 5; *Copley v Dorkmincque* (1676) 2 Lev 166; *Hickman v Walker* (1737) Willes 27; *M'Donnell v Broderick* [1896] 2 IR 136, CA.

In *Prideaux v Webber* (1661) 1 Lev 31 it was held that when time had begun to run it continued to run, even though the courts were closed in consequence of rebellion (see *Beckford v Wade* (1805) 17 Ves 87 at 93, PC). As to the position when the court office is closed on the last day see PARA 920 text and note 4. As to time generally see **TIME**.

The provision, contained in the Limitation Act 1980 s 33 (as to which see PARAS 1001-1002), allowing the court to disapply the limitation period where equitable in a claim for damages for personal injuries or death, does not constitute an exception to the rule that once time has started to run it continues to run.

2 *Penny v Brice* (1865) 18 CBNS 393; *Fergusson v Fyffe* (1841) 8 Cl & Fin 121 at 140, HL. As to the position of the administrator in claims for recovery of land see the Limitation Act 1980 s 26; PARA 923; and **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 37.

3 *Freake v Cranefeldt* (1838) 3 My & Cr 499; *Boatwright v Boatwright* (1873) LR 17 Eq 71. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 396.

4 *Seagram v Knight* (1867) 2 Ch App 628, CA. As to a debtor-executor see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 21. See also *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch 104, [1943] 1 All ER 48, CA.

5 *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch 104, [1943] 1 All ER 48, CA.

6 See the Arbitration Act 1996 s 13(2); and PARA 917.

7 See *Bell v Gosden* [1950] 1 All ER 266, CA (rent rendered irrecoverable by a wartime regulation); cf *Cave v EC (Holdings) Ltd* (1966) 110 Sol Jo 710.

8 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502.

9 *Re Mansel, ex p Norton* (1892) 9 Morr 198, CA; and see *South Sea Co v Wymondsell* (1732) 3 P Wms 143. As to the effect of a winding-up order on claims against a company see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) para 758.

10 *Sheldon v RHM Outhwaite (Underwriting Agencies) Ltd* [1996] AC 102, [1995] 2 All ER 558, HL, disapproving dicta to the contrary in *Tito v Waddell (No 2)* [1977] Ch 106 at 245, [1977] 3 All ER 129 at 245. See further PARA 1228.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(ii) Time Running/925. Effect of war or rebellion.

925. Effect of war or rebellion.

Unless statute provides otherwise¹, the existence of a state of war or rebellion does not in itself prevent time from continuing to run². If, however, the continued performance of a contract would involve dealings with, or benefit to, the enemy or detriment to the interests of the United Kingdom, the effect at common law of the outbreak of war is to abrogate any subsisting right to further performance (other than the right to the payment of a liquidated sum of money, which will be suspended for the duration of the war)³. It seems that, even apart from statute, time will not run so long as the right is suspended⁴. Statutory provision has been made for suspending the running of limitation periods while a necessary party to a claim is an enemy or detained in enemy territory⁵.

1 See eg *Snode v Ward* (1690) 3 Lev 283.

2 This would seem to be the result of the English authorities: see *Prideaux v Webber* (1661) 1 Lev 31; *Bynton's Case* (1667), cited in *Hall v Wybourn* (1690) 2 Salk 420; *Beckford v Wade* (1805) 17 Ves 87, PC; cf *Benyon v Evelyn* (1664) O Bridg 324 (no legal courts until after the Restoration); *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch 104 at 110-111, [1943] 1 All ER 48 at 51-52, CA.

3 See **CONTRACT** vol 9(1) (Reissue) PARA 902. As to the common law principle and legislation relating to the custody and disposal of enemy property see further **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 576 et seq.

4 The view expressed by Bramwell B in *De Wahl v Braune* (1856) 25 LJ Ex 343 at 345, that the operation of the statute is not suspended, may be distinguished on the ground that the claim in question related to a chose in action belonging to an alien enemy. As to the principle that such a chose in action is at common law forfeitable to the Crown and can be enforced for its benefit see *Re Ferdinand Ex-Tsar of Bulgaria* [1921] 1 Ch 107, CA.

5 See the Limitation (Enemies and War Prisoners) Act 1945 s 1; and PARAS 1232-1234.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(ii) Time Running/926. Suspension of cause of action.

926. Suspension of cause of action.

At common law the right to bring a claim could not be suspended by the act of the party, for, if the right was suspended, it was extinguished¹. If, however, a negotiable instrument is taken in payment of a debt, the cause of action is suspended until dishonour²; and an arrangement between a debtor and his creditors may be in such a form as to amount to an agreement that payment should be accepted in a particular way, and that in default the creditors should be remitted to the original cause of action, so that there is a fresh right of action upon the original debt, when default is made, and time does not run until then³. In equity a deed of arrangement between debtor and creditor, by which the creditor covenants not to sue the debtor, while the trusts of the deed continue or until life interests have determined, suspends the operation of the limitation period during the specified time⁴, but a mere letter of licence does not have that effect. Further, a contract not to sue for a specified time does not have the effect of suspending the cause of action and time continues to run throughout the delaying period⁵.

1 *Ford v Beech* (1848) 11 QB 852, Ex Ch; *Belshaw v Bush* (1851) 11 CB 191; cf *Slater v Jones* (1873) LR 8 Exch 186 at 192; *Reeves v Hearne* (1836) 1 M & W 323. As to the effect of a promise not to plead a limitation defence see PARA 907.

2 *Turney v Dodwell* (1854) 3 E & B 136; *Belshaw v Bush* (1851) 11 CB 191 at 205; *Re a Debtor, ex p the Debtor* [1908] 1 KB 344, CA; and see *Irving v Veitch* (1837) 3 M & W 90; *Marreco v Richardson* [1908] 2 KB 584, CA.

3 See *Irving v Veitch* (1837) 3 M & W 90; *Re Stock, ex p Amos* (1896) 3 Mans 324, DC; *M'Donnell v Broderick* [1896] 2 IR 136, CA; *Edwards v Coombe* (1872) LR 7 CP 519; *Re Hatton* (1872) 7 Ch App 723; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 884-889.

4 *O'Brien v Osborne* (1852) 10 Hare 92; *Ivens v Elwes* (1854) 3 Drew 25; and see PARA 939.

5 *Fuller v Redman (No 2)* (1859) 26 Beav 614 at 619.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(ii) Time Running/927. Statute-barred debts within an account.

927. Statute-barred debts within an account.

An acknowledgment constituting an account stated may in certain cases be sued upon even though the original contract in respect of which the acknowledgment is made is incapable of being sued upon as being statute-barred by limitation. Thus, where certain items of the claimant's claim are barred by a statute of limitation and the defendant has a cross claim, and on going through the account a balance is struck in the claimant's favour, this final account amounts to an agreement to set off the statute-barred items against the items due to the defendant, and, a new consideration having arisen by virtue of the set-off and agreement as to the balance due, the claimant may sue upon the account stated even though he could not have recovered the whole original debt¹.

¹ *Ashby v James* (1843) 11 M & W 542; *Siqueira v Noronha* [1934] AC 332, PC; *Bishun Chand Firm v Seth Girdhari Lal* (1934) 50 TLR 465, PC. The Limitation Act 1980 s 30 (formalities necessary for valid acknowledgment: see PARA 1185), does not apply in such a case, as a new contract has arisen: see *Ashby v James* at 544.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(ii) Time Running/928. Effect of death or bankruptcy of party to proceedings.

928. Effect of death or bankruptcy of party to proceedings.

On the making of a bankruptcy order, all causes of action relating to the recovery of the property of the bankrupt vest in the trustee in bankruptcy¹. Certain other categories of causes of action remain vested in the bankrupt². The making of a bankruptcy order does not suspend the running of time in relation to those of the bankrupt's debts which are not included within the bankruptcy³. The survival of causes of action in favour of or against the estate of deceased persons is considered elsewhere in this work⁴.

Where an original party to proceedings has died or had a bankruptcy order made against him and his interest or liability has passed to a new party, the court may order the addition or substitution of the new party after the end of a period of limitation, provided that the relevant limitation period was current when the proceedings were started⁵.

1 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 147, 390. As to the categories of rights or causes of action which vest in the trustee see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 435 et seq.

2 For example, a claim for unfair dismissal is a personal right since it reflects an aspect of a person's individuality and as a result it does not vest in the trustee in bankruptcy: *Grady v Prison Service* [2003] EWCA Civ 527, [2003] 3 All ER 745. See further **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 435.

3 See *Anglo-Manx Group Ltd v Aitken* [2002] BPIR 215, sub nom *Anglo Manx Bank Ltd v Aitkin* [2001] All ER (D) 31 (Oct).

4 See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 814-824.

5 See CPR 19.5(2), (3); and PARA 937.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(iii) Preventing the Statutory Bar/929. When proceedings are begun.

(iii) Preventing the Statutory Bar

929. When proceedings are begun.

Under the Civil Procedure Rules (the 'CPR'), proceedings are started when the court issues a claim form at the request of the claimant¹ and a claim form is issued on the date entered on the form by the court². That date may, however, differ from the date when proceedings are 'brought' for the purposes of the Limitation Act 1980 and any other relevant statute³. A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings⁴. These rules also apply when the alternative procedure under Part 8 of the CPR is used⁵. Where the procedure for using Money Claim Online applies, a claimant may request the issue of a claim form by completing and sending an online claim form and electronically paying the appropriate issue fee⁶; in such a case the claim is 'brought' for the purposes of the Limitation Act 1980 and any other enactment on the date on which the online claim form is received by the court's computer system⁷. Certain possession claims by landlords or mortgagees may also be started online⁸ and when the court issues a claim form following the submission of an online claim form, the claim is 'brought' for the purposes of the Limitation Act 1980 and any other enactment on the date on which the online claim form is received by the court's computer system⁹. Where there has been an error of procedure such as a failure to comply with a rule or practice direction, the error does not invalidate any step taken in the proceedings unless the court so orders and the court may make an order to remedy the error¹⁰. The court's discretion under this power extends to a situation where the wrong procedure has been used for starting proceedings¹¹.

The court may apply sanctions to a party who has not complied with a relevant pre-action or other protocol¹². Where, however, compliance with any part of such a protocol may result in a claimant's claim being time-barred under any provision of the Limitation Act 1980, or any other legislation which imposes a time limit for bringing a claim, the protocols generally provide that the claimant may commence proceedings without complying with the relevant protocol, provided that he applies to the court on notice for directions as to the timetable and form of procedure to be adopted, at the same time as he requests the court to issue proceedings. The court will then consider whether to order a stay of the whole or part of the proceedings pending compliance with the relevant protocol¹³.

Time runs for a set-off or counterclaim from the date on which the original claim is begun but for a claim by way of third party proceedings from the date of the third party proceedings¹⁴.

It has been held that where a solicitor starts proceedings in the name of a client without the client's authority, the client may subsequently ratify those proceedings in certain circumstances even if the claim is time-barred at the date of ratification¹⁵.

A claim must be brought before an employment tribunal by the claimant presenting to an Employment Tribunal Office the details of the claim in writing¹⁶. Two or more claimants may present their claims in the same document if their claims arise out of the same set of facts¹⁷. The secretary of employment tribunals then decides whether or not to accept the claim¹⁸.

¹ CPR 7.2(1).

² CPR 7.2(2). CPR Pt 78 provides procedures for European orders for payment and for the European small claims procedure.

3 See *Practice Direction--How to Start Proceedings--The Claim Form* PD 7 para 5; and PARA 920.

As to the position where the limitation period expires on a day when the court offices are closed see PARA 920 text and note 4. As to the date when an arbitration is deemed to commence see the Arbitration Act 1996 s 14; and PARA 917. See also **ARBITRATION** vol 2 (2008) PARA 1219 et seq.

4 CPR 7.3.

5 See *Practice Direction--Alternative Procedure for Claims* PD 8 para 4.1.

6 *Practice Direction--Money Claim Online* PD 7E para 5.1.

7 *Practice Direction--Money Claim Online* PD 7E para 5.5.

8 See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 661.

9 *Practice Direction--Possession Claims Online* PD 55B para 6.6. The court will keep a record, by electronic or other means, of when online claim forms are received: para 6.6.

10 See CPR 3.10.

11 See *Cala Homes (South) Ltd v Chichester District Council* (1999) 79 P & CR 430, [1999] 4 PLR 77. See also *Hannigan v Hannigan* [2000] 2 FCR 650, [2000] All ER (D) 693, CA (striking out the claim was out of all proportion to use of the wrong claim form and other minor procedural errors).

12 See CPR 3.1(4), (5), 3.9(e), 44.3(a). As to pre-action protocols see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 107 et seq.

13 See eg the *Pre-Action Protocol for Construction and Engineering Disputes* para 6; the *Pre-Action Protocol for Disease and Illness Claims* para 11.1; the *Pre-Action Protocol for Housing Disrepair Cases* para 3.4; the *Protocol for the Instruction of Experts to give Evidence in Civil Claims* para 3.5.

14 See the Limitation Act 1980 s 35(1), (2); and PARA 944.

15 See *Presentaciones Musicales SA v Secunda* [1994] Ch 271, [1994] 2 All ER 737, CA. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

16 See the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 1 r 1(1); and **EMPLOYMENT** vol 41 (2009) PARA 1412.

17 See the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 1 r 1(7); and **EMPLOYMENT** vol 41 (2009) PARA 1412.

18 See the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, Sch 1 rr 2, 3; and **EMPLOYMENT** vol 41 (2009) PARA 1413.

UPDATE

929 When proceedings are begun

NOTE 11--CPR 3.1(4) amended: see **CIVIL PROCEDURE** vol 11 (2009) PARA 247.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(iii) Preventing the Statutory Bar/930. Time for service of claim form; extension of time.

930. Time for service of claim form; extension of time.

After a claim form has been issued¹ under the Civil Procedure Rules (the 'CPR'), it must be served² on the defendant³. The general rule is that the claimant must complete the step required⁴ in relation to the particular method of service chosen before 12.00 midnight on the calendar day four months after the date of issue⁵ but the period for service is six months where the claim form is to be served out of the jurisdiction⁶.

The claimant may apply for an order extending the time for compliance with the above provisions⁷. The general rule is that an application to extend the time for compliance must be made within the period for serving the claim form as specified above, or, where an order has been made under the following provisions⁸, within the period for service specified by that order⁹. If the claimant applies for an order to extend the time for compliance after the end of the specified period¹⁰, the court may make such an order only if:

- 20 (1) the court has failed to serve the claim form; or
- 21 (2) the claimant has taken all reasonable steps to comply with the above requirements¹¹ but has been unable to do so; and
- 22 (3) in either case, the claimant has acted promptly in making the application¹².

An application for an order extending the time for service must be supported by evidence and may be made without notice¹³.

Where the court issues a claim form using Money Claim Online, it will serve a printed version of the claim form on the defendant and send the claimant notice of issue by post¹⁴. The claim form is deemed to be served on the fifth day after the claim was issued irrespective of whether that day is a business day or not¹⁵. The procedure is similar where a possession claim has been started online¹⁶.

The court may dispense with service of the claim form in exceptional circumstances¹⁷. An application for an order to dispense with service may be made at any time; it must be supported by evidence and may be made without notice¹⁸.

1 As to issue of the claim form see PARA 929.

2 As to service of documents under the CPR see CPR Pt 6; and see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 138 et seq.

3 See CPR 7.5(1).

4 The required steps are as follows (CPR 7.5(1), Table), ie where the method of service chosen is:

- 1 (1) first-class post, document exchange or other service which provides for delivery on the next business day, posting, leaving with, delivering to or collection by the relevant service provider;
- 2 (2) delivery of the document to or leaving it at the relevant place, delivering to or leaving the document at the relevant place;
- 3 (3) personal service under CPR 6.5, completing the relevant step required by CPR 6.5(3);
- 4 (4) fax, completing the transmission of the fax;

- 5 (5) other electronic method, sending the email or other electronic transmission.

A claim form is served personally on: (a) an individual by leaving it with that individual; (b) a company or other corporation by leaving it with a person holding a senior position within the company or corporation; or (c) a partnership (where partners are being sued in the name of their firm) by leaving it with (i) a partner; or (ii) a person who, at the time of service, has the control or management of the partnership business at its principal place of business: CPR 6.5(3).

5 CPR 7.5(1). A claim form served in accordance with CPR Pt 6 is deemed to be served on the second business day after completion of the relevant step under CPR 7.5(1) (see note 4): CPR 6.14. The deemed day of service of a document under CPR Pt 6 is not rebuttable by evidence proving that service has actually been effected on a different day: *Godwin v Swindon Borough Council* [2001] EWCA Civ 1478, [2001] 4 All ER 641, [2002] 1 WLR 997 (applied in *Anderton v Clwyd County Council* [2002] EWCA Civ 933, [2002] 3 All ER 813, [2002] 1 WLR 3174; *Cranfield v Bridgegrove Ltd* [2003] EWCA Civ 656, [2003] 3 All ER 129, [2003] 1 WLR 2441; *Olafsson v Gissurarson* [2006] EWHC 3214 (QB), [2007] 1 Lloyd's Rep 188, [2006] All ER (D) 345 (Dec) (affd [2008] EWCA Civ 152, [2008] 1 All ER (Comm) 1106, [2008] All ER (D) 11 (Mar)); and *Mucelli v Government of Albania* [2007] EWHC 2632 (Admin), [2008] 2 All ER 340, [2007] NLJR 1659, but not followed in *Hart Investments Ltd v Fidler* [2006] EWHC 2857 (TCC), 109 ConLR 67, [2007] BLR 30). Saturday and Sunday are not excluded from the calculation of the deemed day of service by first-class post: *Anderton v Clwyd County Council*.

6 See CPR 7.5(2). In that case, the claim form must be served in accordance with CPR Pt 6 s IV (CPR 6.30-CPR 6.47) within six months of the date of issue: CPR 7.5(2).

7 CPR 7.6(1).

8 Ie under CPR 7.6: see the text and notes 9-13.

9 CPR 7.6(2).

10 Ie the period specified in CPR 7.5 (see the text and notes 1-6) or in the order under CPR 7.6.

11 Ie to comply with CPR 7.5.

12 CPR 7.6(3).

13 CPR 7.6(4); and for the court's general power to extend time limits see CPR 3.1(2)(a). On an application under CPR r 3.1(2)(a) the correct approach is to concentrate on the prejudice that has been caused, or will be caused, to the defendant by the failure to serve particulars of claim on time: *Robert v Momentum Services Ltd* [2003] EWCA Civ 299, [2003] 2 All ER 74, [2003] 1 WLR 1577.

14 *Practice Direction--Money Claim Online* PD 7E para 5.6.

15 *Practice Direction--Money Claim Online* PD 7E para 5.8.

16 See *Practice Direction--Possession Claims Online* PD 55B paras 6.7, 6.8. In that case, however, notice of issue to the claimant may be by email: see para 6.7(2).

17 CPR 6.16(1); and see *Cranfield v Bridgegrove Ltd* [2003] EWCA Civ 656, [2003] 3 All ER 129, [2003] 1 WLR 2441.

18 CPR 6.16(2).

UPDATE

930 Time for service of claim form; extension of time

NOTE 5--*Mucelli*, cited, affirmed sub nom *Mucelli v Government of Albania; Deputy Public Prosecutor in Creteil, France v Moulai* [2009] UKHL 2, [2009] 3 All ER 1035.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(iii) Preventing the Statutory Bar/931. Amendments to statements of case.

931. Amendments to statements of case.

Where a party applies to amend his statement of case¹ in one of the ways mentioned below, and a period of limitation has expired under the Limitation Act 1980, the Foreign Limitation Periods Act 1984 or any other enactment which allows such an amendment², or under which such an amendment is allowed, the following provisions apply³. The court may allow an amendment:

- 23 (1) whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings⁴;
- 24 (2) to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question⁵;
- 25 (3) to alter the capacity⁶ in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired⁷.

The circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period are discussed below⁸.

Where what is sought to be amended does not raise a new claim, but instead seeks to correct an error, the court's discretion to permit the amendment will not be restricted by heads (1) to (3) above⁹.

1 As to statements of case see **CIVIL PROCEDURE** vol 11 (2009) PARA 584 et seq.

2 The limitation periods in the Patents Act 1977 s 37(5) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 367) do not permit new claims to be raised out of time and are not, therefore, limitation periods to which CPR 17.4 applies: *Rhone-Poulenc Rorer International Holdings Inc v Yeda Research and Development Co Ltd* [2006] EWHC 160 (Ch), [2006] RPC 605, [2006] All ER (D) 223 (Feb); affd [2006] EWCA Civ 1094, [2006] RPC 167, [2006] All ER (D) 464 (Jul); revsd on other grounds [2007] UKHL 43, [2008] 1 All ER 425, (2007) Times, 30 October.

3 CPR 17.4(1); and see the Limitation Act 1980 s 35. These two provisions must be read together. Section 35 applies to new claims in pending proceedings and any such new claim is deemed to be a separate claim and to have been commenced on the same date as the original claim: s 35(1)(b). 'New claim' means any claim by way of set-off or counterclaim, and any claim involving either (1) the addition or substitution of a new cause of action; or (2) the addition or substitution of a new party: see s 35(2); and see *Yorkshire Regional Health Authority v Fairclough Building Ltd* [1996] 1 All ER 519, [1996] 1 WLR 210, CA (substitution of National Health Service trust for claimant health authority not a new claim within the Limitation Act 1980 s 35(2)). The court must not allow such a new claim (other than an original set-off or counterclaim) to be made in the course of any claim after the expiry of any time limit under the 1980 Act which would affect a new claim brought to enforce that claim, except as provided by s 33 (discretionary power to exclude the limitation period in claims for damages for personal injuries or death: see PARAS 1001-1002): see s 35(3); and PARA 944. See also *Braniff v Holland and Hannen and Cubitts (Southern) Ltd* [1969] 3 All ER 959, [1969] 1 WLR 1533, CA; *Brickfield Properties Ltd v Newton* [1971] 3 All ER 328 at 341-342, [1971] 1 WLR 862 at 879, CA, per Edmund Davies LJ, and at 343 and 880-881 per Cross LJ; *Government of the State of Kuwait v Sir Frederick Snow & Partners* [1981] 1 Lloyd's Rep 656 (suggesting the court might depart from the rule in exceptional circumstances).

It is uncertain whether a change in the law relating to a relevant limitation period affects outstanding cases: see *Ketteman v Hansel Properties Ltd* [1985] 1 All ER 352, [1984] 1 WLR 1274, CA; affd [1987] AC 189, [1988] 1 All ER 38, HL.

4 CPR 17.4(2); and see the Limitation Act 1980 s 35(2), (4), (5)(a). For the purposes of the Limitation Act 1980 s 35(5)(a) and CPR 17.4(2) as they apply to claims in respect of mistakes of the kind mentioned in the Finance Act 2004 s 320(1) (see PARA 1231), a new claim is not to be regarded as arising out of the same facts, or substantially the same facts, if it is brought in respect of a different payment, transaction, period or other matter; and this provision has effect in relation to claims made on or after 20 November 2003: Finance Act 2004 s 320(2). Nothing in s 320, however, affects a claim made before 20 November 2003 that by virtue of the Limitation Act 1980 s 35(1)(b) (see note 3) is treated as a claim brought before 8 September 2003: Finance Act 2004 s 320(4).

A 'new claim' for the purposes of CPR 17.4(2) does not have to arise out of the same facts, or substantially the same facts, as an existing claim against that defendant; it is enough that the new claim arises out of the same facts, or substantially the same facts, as an existing claim in the proceedings: *Mersey Docks Property Holdings Ltd v Birse Construction Ltd* [2004] EWHC 3264 (TCC), 99 ConLR 122, [2004] All ER (D) 284 (Oct). Moreover, the court has discretion, after the expiry of the limitation period, to allow a claimant to plead a new cause of action that arises out of substantially the same facts as have been put in issue by the defence of any defendant: *Charles Church Developments Ltd v Stent Foundations Ltd* [2006] EWHC 3158 (TCC), [2007] 1 WLR 1203, [2006] All ER (D) 54 (Dec). As to the exercise of the discretion under CPR 17.4(2) see also eg *Dhillon v Siddiqui* [2007] EWHC 2936 (Ch), [2007] All ER (D) 129 (Dec) (where permission to amend was refused); *Society of Lloyd's v Henderson* [2005] EWHC 850 (Comm), [2005] All ER (D) 155 (May) (permission to amend refused; claim of misfeasance depended on facts not previously in issue); *Chantrey Vellacott (a firm) v Convergence Group plc* [2005] EWCA Civ 290, (2005) Times, 25 April, [2005] All ER (D) 271 (Mar) (permission granted); *Wood v Chief Constable of the West Midlands Police* [2004] EWCA Civ 1638, (2004) Times, 13 December, [2004] All ER (D) 107 (Dec) (where the court discusses the interaction of CPR 17.4(2) and the discretion under the Limitation Act 1980 s 32A (see PARA 996)); *Hemmingway v Smith Roddam (a firm)* [2003] EWCA Civ 1342, 147 Sol Jo LB 1089, [2003] All ER (D) 123 (Sep); *Morris v Bank of America* [2002] EWHC 1560 (Ch), [2002] All ER (D) 435 (Jul); *Coal Authority v HJ Banks & Co Ltd* [2002] EWCA Civ 841, [2002] All ER (D) 57 (Jun) (where permission to amend was refused); *Kuwait Airways Corp v Iraqi Airways Co* [2002] EWCA Civ 515, [2002] All ER (D) 444 (Mar); *Mark v Associated Newspapers Ltd* [2002] All ER (D) 41 (Feb); *Smith v Henniker-Major & Co (a firm)* [2002] BCC 544, [2001] All ER (D) 235 (Oct) (affd [2002] EWCA Civ 762, [2003] Ch 182, [2002] 2 BCLC 655); *First Roodhill Leasing Ltd v Gillingham Operating Co Ltd* [2001] NPC 109, [2001] All ER (D) 65 (Jul); *Royal Brompton Hospital National Health Trust v Hammond (No 2)* (1999) 69 ConLR 132; *Berezovsky v Abramovich* [2008] EWHC 1138 (Comm), [2008] All ER (D) 294 (May) (where permission to amend was refused).

It has been held that CPR 17.4(2), if too strictly applied, may violate the Convention right to a fair trial under the Human Rights Act 1998 (see PARA 914 at head (1)) but is capable of being interpreted in a way that will not do so: see *Goode v Martin* [2001] EWCA Civ 1899, [2002] 1 All ER 620, [2002] 1 WLR 1828.

For cases under the previous rules (ie RSC Ord 20 r 5(5) (revoked)) see *Booker v Associated British Ports* [1995] PIQR P375, CA (claim by widow under Fatal Accidents Act 1976 involved same facts 'already in issue' in husband's own claim); *Collins v Hertfordshire County Council* [1947] KB 598, [1947] 1 All ER 633; *Dorman v JW Ellis & Co Ltd* [1962] 1 QB 583, [1962] 1 All ER 303, CA (new particulars of negligence although different in quality from the original particulars did not raise a new cause of action nor a different cause of negligence, but merely invited a different approach to the same facts); and *Robinson v Unicos Property Corp Ltd* [1962] 2 All ER 24, [1962] 1 WLR 520, CA (claimants amending their title were still making the same claim on the same basis and the amendment did not raise a new cause of action). See also *Brickfield Properties Ltd v Newton* [1971] 3 All ER 328, [1971] 1 WLR 862, CA (design claim and supervision claim against architect arose out of substantially the same facts; design cause of action was one which the court had jurisdiction to permit the claimants to pursue by amendment of their writ); cf *Hancock Shipping Co Ltd v Kawasaki Heavy Industries Ltd, The Casper Trader* [1991] 2 Lloyd's Rep 237, CA (court in its discretion refused to amend to add allegation of breach of duty of care in design of ship where claim originally for breach of contract to modify ship); *Hydrocarbons Great Britain Ltd v Cammell Laird Shipbuilders Ltd (No 2)* (1991) 58 BLR 123, 25 ConLR 131 (negligent misstatement held not to arise out of substantially the same facts as the negligent act originally pleaded); *Pathak v James Nourse Ltd* [1961] 2 Lloyd's Rep 467, CA (amended pleadings; held writ sufficient to embrace claim whether under first pleading or the amended pleading; decided on wording of previous rule of practice); *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400, 142 Sol Jo LB 243, CA (a claim based on allegations of fraud and dishonesty did not involve substantially the same facts as a claim based on allegations of negligence); *Phelps v Spon-Smith & Co (a firm)* (1999) Times, 26 November, [1999] All ER (D) 1268 (writ amended out of time to add a new cause of action which had which had been pleaded within the time limits in the statement of claim but inadvertently omitted from the writ). Under the Civil Procedure Rules ('the CPR'), proceedings are no longer commenced by writ but by the issue of a claim form: see PARA 929. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33. See also, however, *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701 at [22]-[26], [2007] 4 All ER 330 at [22]-[26], [2008] 1 WLR 585, per Lord Phillips of Worth Matravers CJ, disapproving obiter dicta of Jacob LJ in *Morgan Est (Scotland) Ltd v Hanson Concrete Products Ltd* [2005] EWCA Civ 134 at [40], [2005] 3 All ER 135 at [40], [2005] 1 WLR 2557, and holding that when interpreting the provisions of the CPR in respect of the substitution of parties (see CPR 19.5; and PARA 937), which closely follow the form of the relevant parts of the Limitation Act 1980 s 35, it is necessary to have regard to the jurisprudence in relation to RSC Ord 20 r 5 (revoked).

The court will refuse to allow an amendment which would introduce a new cause of action against a foreign defendant in respect of which the court would have refused leave for service out of the jurisdiction: *Beck v Value Capital Ltd (No 2)* [1974] 3 All ER 442, [1975] 1 WLR 6 (affd [1976] 2 All ER 102, [1976] 1 WLR 572n, CA); cf *R v Newcastle-upon-Tyne Justices, ex p John Bryce (Contractors) Ltd* [1976] 2 All ER 611, [1976] 1 WLR 517, DC (amendment of information where no injustice done to defendant). See also see *ED & F Man Sugar Ltd v Lendoudis* [2007] EWHC 2268 (Comm), [2008] 1 All ER 952, applying *Metall und Rohstoff AG v Donaldson Lufkin & Jenrette Inc* [1990] 1 QB 391, [1989] 3 All ER 14.

5 CPR 17.4(3). Whether a mistake is one that would cause reasonable doubt as to the identity of the claimant intending to sue has to be determined objectively having regard to what was said in the claim form in the light of what was known by the defendants and the context in which the claim came to be made: *ABB Asea Brown Boveri Ltd v Hiscox Dedicated Corporate Member Ltd, ABB Asea Brown Boveri Ltd v Jardine Lloyd Thompson Ltd* [2007] EWHC 1150 (Comm), [2007] All ER (D) 259 (May). There is no reason why permission may not be given both to substitute a claimant under CPR 19.5 (see PARA 937) and to add new claims that fall within CPR 17.4(3), but it is not permissible to rely upon the new claims in order to assist in demonstrating that the claim has been brought in the name of the wrong party: *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701, [2007] 4 All ER 330, [2008] 1 WLR 585.

For decisions under the previous rules (ie RSC Ord 20 r 5(2), (3) (revoked)) see *Rodriguez v Parker* [1967] 1 QB 116, [1966] 2 All ER 349; *Evans Constructions Co Ltd v Charrington & Co Ltd and Bass Holdings Ltd* [1983] QB 810, [1983] 1 All ER 310, CA; *Mitchell v Harris Engineering Co Ltd* [1967] 2 QB 703, [1967] 2 All ER 682, CA (new defendant allowed to be substituted), negating *Davies v Elsby Bros Ltd* [1960] 3 All ER 672, [1961] 1 WLR 170, CA ('Elsby Bros (a firm)' not amended to 'Elsby Bros Ltd'); *Whittam v WJ Daniel & Co Ltd* [1962] 1 QB 271, [1961] 3 All ER 796, CA (correction of misnomer allowed; decided on wording of previous rule of practice); *Katzenstein Adler Industries (1975) Ltd v Borchard Lines Ltd, The Joanna Borchard* [1988] 2 Lloyd's Rep 274, [1988] NLJR 94 (names of claimants and relevant country in which they carried on business amended); *Hibernian Dance Club v Murray* [1997] PIQR P46, (1996) Times, 12 August, CA (amendment of writ allowed where original writ issued was a nullity); cf *Lucy v WT Henleys Telegraph Works Co Ltd* [1970] 1 QB 393, [1969] 3 All ER 456, CA (fatal accident; majority of court refused to allow addition of a defendant after 12 months). See also *Crook v Aaron Dale Construction and Roofing Ltd* [1997] PIQR P36, CA ('Robert Burns trading as Aaron Dale Building Construction and Roofing Services' amended to 'Aaron Dale Construction and Roofing Ltd', notwithstanding the claimant's insistence over a considerable period that the company was not in fact limited). Under the Civil Procedure Rules ('the CPR'), proceedings are no longer commenced by writ but by the issue of a claim form: see PARA 929. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

'Mistake' should not be narrowly construed to mean error without fault: see *Mitchell v Harris Engineering Co Ltd* [1967] 2 QB 703 at 721, [1967] 2 All ER 682 at 688, CA, per Russell LJ; and *Crook v Aaron Dale Construction and Roofing Ltd* [1997] PIQR P36, CA. As to mistake generally see *International Bulk Shipping and Services Ltd v Minerals and Metals Trading Corp of India* [1996] 1 All ER 1017, CA; and **MISTAKE**.

6 For these purposes, 'capacity' means legal competence or status to bring or defend a claim, which is a competence that a litigant can have in his own right or on behalf of another person. It follows that the alteration in capacity referred to is an alteration from a representative capacity or personal capacity to another representative capacity, or (in the case of a representative claim) to a personal capacity: see *Haq v Singh* [2001] EWCA Civ 957, [2001] 1 WLR 1594, [2001] All ER (D) 394 (May) (no change in capacity for these purposes when the claimant took an assignment of the cause of action against the defendants from her former trustee in bankruptcy).

7 CPR 17.4(4); and see note 6. See also eg *Stebbing v Holst & Co Ltd* [1953] 1 All ER 925, [1953] 1 WLR 608 (amendment of executor or executrix after grant of probate); and *Finnegan v Cementation Co Ltd* [1953] 1 QB 688, [1953] 1 All ER 1130, CA (amending capacity as administrator after grant of administration) (both decided under the previous rules).

8 See PARA 937.

9 See *Evans v CIG Mon Cymru Ltd* [2008] EWCA Civ 390, [2008] All ER (D) 91 (Jan) (amendment to the claim form permitted so as to substitute the words 'an accident' for 'abuse'); *Reuben v Time Inc, TWM Landal Ltd v Time Inc* [2003] EWCA Civ 06, 147 Sol Jo LB 116, [2003] All ER (D) 166 (Jan); *Abbey National plc v John Perry & Co* [2001] EWCA Civ 1630, [2001] All ER (D) 348 (Oct) (changing the description in the claim from that of a constructive trust to that of a bare trust was simply a semantic alteration rather than one of substance). As to the court's general power to give permission for a statement of case to be amended see CPR 17.1(2), 17.3; and **CIVIL PROCEDURE** vol 11 (2009) PARA 609.

UPDATE

931 Amendments to statements of case

NOTE 4--See also *Seele Austria GmbH & Co KG v Tokio Marine Europe Insurance Ltd* [2009] EWHC 2066 (TCC), (2009) 126 ConLR 69.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(3) THE RUNNING OF TIME/(iii) Preventing the Statutory Bar/932. Proceedings on behalf of claimant and others.

932. Proceedings on behalf of claimant and others.

Where more than one person has the same interest in a claim, the claim may be begun, or the court may order that the claim be continued, by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest¹. In certain circumstances the court may make an order appointing a person to represent any other person or persons in a claim where the person or persons to be represented are unborn, cannot be found, cannot easily be ascertained or are a class of persons who have the same interest in a claim². The court may also make a group litigation order³. If a claim is brought by a claimant on behalf of himself and other persons, the bringing of the claim will prevent the limitation period from running against those other persons⁴.

1 See CPR 19.6(1); and **CIVIL PROCEDURE** vol 11 (2009) PARA 229.

2 See CPR 19.7(2); and **CIVIL PROCEDURE** vol 11 (2009) PARA 230.

3 See CPR 19.11; and **CIVIL PROCEDURE** vol 11 (2009) PARA 233.

4 *Sterndale v Hankinson* (1827) 1 Sim 393. See also *Berrington v Evans* (1835) 1 Y & C Ex 434; *Brown v Lynch* (1841) 4 I Eq R 316; *Tatam v Williams* (1844) 3 Hare 347; *Watson v Birch* (1847) 15 Sim 523; *Bennett v Bernard* (1848) 12 I Eq R 220 at 234; *Thompson v Hurly* [1905] 1 IR 588. Cf, however, *Archdall v Anderson* (1890) 25 LR Ir 433 (legatees obtaining the benefit of a claim brought by a mortgagee to raise the sum due on an equitable mortgage, when a sale under the judgment in the claim realised more than sufficient to pay the claimant's demand); *Harpur v Buchanan* [1919] 1 IR 1 (claim by a mortgagee for a sale of the mortgaged land and a distribution of the proceeds of sale among all the incumbrancers having claims upon them); *Murphy v Sterne* (1838) 1 Dr & Wal 236.

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933. Administration proceedings.

If administration proceedings are begun by a personal representative who is also a creditor of the testator, and a claim is made by a creditor for a simple contract debt which is more than six years old at the time of the judgment for administration but not at the time of the commencement of the claim, the claim is barred¹. An ordinary administration judgment operates as a judgment in favour of creditors and prevents time running against them²; an administration judgment or order operates from its date, not merely in favour of a creditor, but in favour also of the right of set-off against a creditor's demand³.

1 *Re Greaves, Bray v Tofield* (1881) 18 ChD 551.

2 *Finch v Finch* (1876) 45 LJ Ch 816; and see *Harrison v Kirk* [1904] AC 1 at 5, HL. As to an administration claim by residuary legatees see *Prowse v Spurgin* (1868) LR 5 Eq 99; and see generally **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 705 et seq.

3 *Re Ballard, Lovell v Forester* [1890] WN 64.

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934. Claim must be for recovery of demand sought to be saved from bar.

In order to prevent the operation of the limitation period, a claim, by whomsoever begun, must be in its nature one for the recovery of the demand sought to be saved from the bar¹. Therefore, if in a foreclosure claim an inquiry is directed as to incumbrances, no incumbrancer coming in under the judgment can get any benefit from the commencement of the claim as regards the running of time². If an incumbrancer is made a defendant, it is doubtful whether he can avail himself of the commencement of the proceedings against him so as to save the operation of the limitation period on his claim; the better course for him on his being made defendant would, it seems, be to claim payment of his incumbrance³.

1 See *Thompson v Hurly* [1905] 1 IR 588.

2 *Bennett v Bernard* (1848) 12 I Eq R 220; *Harpur v Buchanan* [1919] 1 IR 1 at 4.

3 See *Watson v Birch* (1847) 15 Sim 523; *Humble v Humble* (1857) 24 Beav 535. Mortgage claims are now usually for possession, to allow a mortgagee to exercise his power of sale and give vacant possession. Proceedings for foreclosure are still sometimes used where a depressed market has caused the security to be insufficient cover and the mortgagee has preferred to foreclose and wait for the market to improve. See generally **MORTGAGE** vol 77 (2010) PARA 101 et seq.

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935. Effect of appointment of receiver.

The appointment of a receiver does not save the rights of any persons but the parties to the claim in which the receiver was appointed¹. Where money is paid into court by a receiver appointed in a claim, the money, until appropriated to some particular demand, is available for the satisfaction of debts, and, from the time of payment in, time does not run against the right of a person entitled².

¹ See generally **RECEIVERS**.

² *Howlin v Sheppard* (1870) 6 I Eq R 38; *Re Nugent's Trusts* (1885) 19 LR Ir 140; *Re Belton's Estate* [1894] 1 IR 537; and see *Lancaster v Evors* (1846) 10 Beav 154; *Micklethwaite v Vavasour* (1893) 9 TLR 376; *Ballard v Milner* [1895] WN 14; *Re Dennis, ex p Dennis* [1895] 2 QB 630; and *Harrison v Kirk* [1904] AC 1 at 5, HL.

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936. Bankruptcy and winding up.

Proceedings in bankruptcy or for the winding up of a company are for the benefit of all creditors, and prevent time from running in respect of provable debts in favour of the person or company indebted¹. In the case of a disputed bankruptcy debt, time begins to run for the purposes of the Limitation Act 1980 from the date of annulment; and time ceases to run for limitation purposes on the making of a bankruptcy order, but only in respect of debts provable in the bankruptcy, and not in respect of the creditor's right to pursue other remedies². It would seem that time does not run for limitation purposes while the debt is secured, by payment into court or otherwise³. Proceedings in bankruptcy do not prevent time running in favour of a debtor in respect of a debt due to the bankrupt⁴.

Where the defendant is insolvent, time will cease to run as against the petitioning creditor as from the date of the presentation of his petition; however, time will not cease to run as against other creditors until the making of the winding-up or bankruptcy order which converts their original contractual rights into proprietary rights under a trust⁵. A claim brought against a company's directors for wrongful trading⁶ may not be brought more than six years after the date when the company went into liquidation⁷. A third party's claim against the insured is one to which the normal principles of insolvency apply, namely that if it is not time-barred at the beginning of the bankruptcy or winding up, it does not become time-barred by the passage of further time thereafter⁸.

1 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 758.

2 See *Re Benzon, Bower v Chetwynd* [1914] 2 Ch 68 at 75-76, CA; *Cotterell v Price* [1960] 3 All ER 315, [1960] 1 WLR 1097; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 502, 612. It will be in exceptional cases only that there are other remedies in respect of which time will run for limitation purposes.

3 See *Re Dennis, ex p Dennis* [1895] 2 QB 630.

4 *Re Mansell, ex p Norton* (1892) 9 Morr 198, CA.

5 See *Re Cases of Taffs Well Ltd* [1992] Ch 179, [1991] 3 WLR 731.

6 See under the Insolvency Act 1986 s 214: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 914.

7 *Re Farmizer (Products) Ltd, Moore v Gadd* [1997] 1 BCLC 589, [1997] BCC 655, CA (the limitation period under the Insolvency Act 1986 s 214 is governed by the Limitation Act 1980 s 9(1): see PARA 1005).

8 *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd* [2005] EWCA Civ 1408, [2006] QB 808, [2005] All ER (D) 388 (Nov).

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937. Change of parties.

Provision is made for the carrying on of a claim by or against the proper persons in the event of a change, after the commencement of the claim, in the parties in whom the cause of action is vested or against whom the claim is brought¹. Where, during the course of proceedings, there is a transmission of interest from the claimant company to another by virtue of the doctrine of universal succession or a foreign statute having similar effect, the court has jurisdiction to revive the claim on an application by the transferee or absorbing company to be substituted as claimant in the claim and to make the necessary substitution, notwithstanding that the relevant period of limitation has expired, provided that the defendant would not suffer any prejudice as a result of the substitution².

The following rules apply to a change of parties after the end of a period of limitation under the Limitation Act 1980, the Foreign Limitation Periods Act 1984 or any other enactment³ which allows such a change, or under which such a change is allowed⁴. The court may add or substitute a party only if the relevant limitation period was current when the proceedings were started and the addition or substitution is necessary⁵; and the addition or substitution of a party is necessary only if the court is satisfied that:

- 26 (1) the new party is to be substituted for a party who was named in the claim form in mistake for the new party⁶;
- 27 (2) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant⁷; or
- 28 (3) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party⁸.

In addition, in a claim for personal injuries the court may add or substitute a party where it directs that:

- 29 (a) the special time limit for claims for personal injuries⁹ or the special time limit for claims under fatal accidents legislation¹⁰ is not to apply to the claim by or against the new party; or
- 30 (b) the issue of whether those time limits apply is to be determined at trial¹¹.

A new defendant does not become a party to the proceedings until the amended claim form has been served on him¹². The court has jurisdiction¹³ to entertain an application to challenge the joinder of a party under the above rules¹⁴.

An order will not be made for the purpose of reviving the remedy on a judgment which has been barred by the statutory provision relating to the limitation of claims upon judgments¹⁵. Where, however, the court holds money that has been paid in to the credit of a suit, lapse of time, however long, is no ground for refusing an order entitling the representative of a party to carry on the proceedings so far as is necessary for dealing with the funds in court¹⁶. Where security has been given in the case of an untraced creditor, the court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it thinks fit and if no claim is made on the security within 12 months of the date of the advertisement, the court must, on application in that behalf, order the security to be released¹⁷. Where a person is added as party to the claim, the joinder does not relate back to the issue of the claim form

against the original defendant; instead, time ceases to run from the date when joinder is deemed to have taken place¹⁸.

1 See the Limitation Act 1980 s 35(2), (4), (5)(b). However, the addition or substitution of a new party will not be regarded as necessary for the determination of the original claim unless the new party is substituted for a party whose name was given in any claim made in the original claim in mistake for the new party's name (s 35(6)(a); and see head (1) in the text) or any claim already made in the original claim cannot be maintained by or against an existing party unless the new party is joined or substituted as claimant or defendant in that claim (s 35(6)(b); and see head (2) in the text).

2 *Toprak Enerji Sanayi AS v Sale Tilney Technology plc* [1994] 3 All ER 483, [1994] 1 WLR 840. See also *Industrie Chimiche Italia Centrale v Alexander Tsaviliris & Sons Maritime Co, The Choko Star* [1996] 1 All ER 114, [1996] 1 WLR 774.

3 It is possible to interpret CPR 19.5(1)(c) as referring to any enactment which allows or which does not prohibit a change of parties after the end of a relevant limitation period; such a change need not expressly be allowed: see *Parsons v George* [2004] EWCA Civ 912, [2004] 3 All ER 633, [2004] 1 WLR 3264, disapproved in *Morgan Est (Scotland) Ltd v Hanson Concrete Products Ltd* [2005] EWCA Civ 134, [2005] 3 All ER 135, [2005] 1 WLR 2557 but applied in *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701, [2007] 4 All ER 330, [2008] 1 WLR 585.

4 CPR 19.5(1).

5 CPR 19.5(2).

6 CPR 19.5(3)(a). CPR 19.5(3)(a) can be utilised only for the substitution, rather than the addition, of a party: *Broadhurst v Broadhurst* [2007] EWHC 1828 (Ch), [2007] All ER (D) 522 (Mar). A mistake as to the identity of the relevant party does not come within CPR 19.5(3): *O'Byrne v Aventis Pasteur MSD Ltd* [2007] EWCA Civ 966, [2008] 1 WLR 1188, 98 BMLR 160 (for further proceedings see [2008] UKHL 34, [2008] All ER (D) 123 (Jun)); *Dewrace Ltd v Brown* [2007] EWHC 3100 (TCC), [2008] All ER (D) 76 (Jan); and see *ABB Asea Brown Boveri Ltd v Hiscox Dedicated Corporate Member Ltd, ABB Asea Brown Boveri Ltd v Jardine Lloyd Thompson Ltd* [2007] EWHC 1150 (Comm), [2007] All ER (D) 259 (May); *Weston v Gribben* [2006] EWCA Civ 1425, 150 Sol Jo LB 1463, [2006] All ER (D) 29 (Nov) (disapproved in *Adelson v Associated Newspapers Ltd* [2007] EWCA Civ 701, [2007] 4 All ER 330, [2008] 1 WLR 585); *Morgan Est (Scotland) Ltd v Hanson Concrete Products Ltd* [2005] EWCA Civ 134, [2005] 3 All ER 135, [2005] 1 WLR 2557 (obiter dicta of Jacob LJ at [40] suggesting the CPR 19.5(3)(a) need not be interpreted restrictively disapproved by Lord Phillips of Worth Matravers CJ in *Adelson v Associated Newspapers Ltd* at [22]); *Ultra Furniture Ltd v KPMG Audit plc* [2003] All ER (D) 302 (May); *Compass Group plc v Hobart Manufacturing Co Ltd* [2002] All ER (D) 175 (Mar), CA; *Horne-Roberts v SmithKline Beecham plc* [2001] EWCA Civ 2006, [2002] 1 WLR 1662, 65 BMLR 79 (disapproved in *Morgan Est (Scotland) Ltd v Hanson Concrete Products Ltd* but applied by *Adelson v Associated Newspapers Ltd* and *O'Byrne v Aventis Pasteur SA*). As to the distinction between a mistake as to name and a mistake as to identity, and the appropriate test to be applied, see *The Sardinia Sulcis v Al Tawwab* [1991] 1 Lloyd's Rep 201 at 207, CA, per Lloyd LJ, approved in *Adelson v Associated Newspapers Ltd*. The Court of Appeal has stated that it is unlikely that the court will allow joinder of a party to correct a mistake, pursuant to CPR 19.5(3)(a), where the correct pre-action protocol has not been followed: see *Martin v Kaisary* [2005] EWCA Civ 594, [2005] All ER (D) 260 (Mar).

There is no reason why permission may not be given both to substitute a claimant under CPR 19.5 and to add new claims that fall within CPR 17.4(3) (see PARA 931) but it is not permissible to rely upon the new claims in order to assist in demonstrating that the claim has been brought in the name of the wrong party: *Adelson v Associated Newspapers Ltd*.

7 CPR 19.5(3)(b). The potential for any injustice has to be borne in mind when exercising the discretion to allow the addition or substitution of a party: *Martin v Kaisary* [2005] EWCA Civ 594, [2005] All ER (D) 260 (Mar). See also *Roberts v Gill & Co* [2008] EWCA Civ 803, [2008] All ER (D) 162 (Jul). The provisions of CPR 19.5(3)(a), (b) are alternative, not cumulative: *SP Manweb plc v Bechtel Water Technology Ltd, United Utilities plc v Enpure Ltd* [2008] EWHC 2270 (TCC) at [44].

8 CPR 19.5(3)(c).

9 See the Limitation Act 1980 s 11: see PARA 998.

10 See the Limitation Act 1980 s 12: see PARA 1000.

11 CPR 19.5(4).

12 *Practice Direction--Addition and Substitution of Parties* PD 19 para 3.3.

13 le under CPR Pt 23: see **CIVIL PROCEDURE** vol 11 (2009) PARA 303 et seq.

14 *Sarayah v Suren* [2004] EWHC 1981 (QB), [2004] All ER (D) 62 (Sep).

15 See the Limitation Act 1980 s 24; and PARAS 1010, 1012.

16 In *Micklethwaite v Vavasour* (1893) 9 TLR 376, Chitty J granted such an order after the lapse of 150 years, the applicant seeking the order for the purpose of getting at the funds which were in court, the order being limited to the funds in court.

17 See the Insolvency Rules 1986, SI 1986/1925, r 6.211(4).

18 *Ketteman v Hansel Properties Ltd* [1987] AC 189, [1988] 1 All ER 38, HL, overruling *Seabridge v H Cox & Sons (Plant Hire) Ltd* [1968] 2 QB 46, [1968] 1 All ER 570, CA. For other cases under the previous rules (ie RSC Ord 15 (revoked)) see *Liff v Peasley* [1980] 1 All ER 623, [1980] 1 WLR 781, CA (approved in *Ketteman v Hansel Properties Ltd*); *Liptons Cash Registers and Business Equipment Ltd v Hugin (GB) Ltd* [1982] 1 All ER 595, not following *Gawthrop v Boulton* [1978] 3 All ER 615, [1979] 1 WLR 268 (writ amended to allow joinder of parties on terms that amendment took effect only from the date on which it was made); and *Leadbitter v Hodge Finance Ltd* [1982] 2 All ER 167.

UPDATE

937 Change of parties

NOTE 17--See SI 1986/1925 r 6.211(5)-(7) (added by SI 2010/686).

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938. Claim to set aside judgment.

Where a judgment has been obtained by fraud or collusion the judgment may normally be treated as a nullity and in this case, or where, since the judgment, fresh material evidence has been obtained which could not previously have been procured, a party to such a judgment may generally apply to have it set aside or rescinded¹. Such a claim may be refused if application is made more than six years from the date of the judgment².

1 See **CIVIL PROCEDURE** vol 12 (2009) PARAS 1143, 1715.

2 See the Limitation Act 1980 s 24; and PARA 1010. As to the extension of periods of limitation by acknowledgment or part payment see PARA 1181 et seq.

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939. Agreement not to sue.

If creditors enter into a binding agreement not to sue a debtor for a certain period of time, the agreement can be pleaded as a defence to a claim by the creditors, and no statute of limitation will run while the agreement is in force. Thus, if a deed between a debtor and his creditors provides that, in consideration of the debtor giving up his life interest in certain property for the payment of his debts, licence should be given to the debtor to carry on his business without suit or molestation to his person or property, and that if any of the creditors take proceedings to enforce their claims their debts should be forfeited, creditors suing within the statutory period after his death can rely on the agreement as an answer to a plea of the statute¹.

¹ *O'Brien v Osborne* (1852) 10 Hare 92; and see *Ivens v Elwes* (1854) 3 Drew 25; and PARA 926. Once time has started to run, an agreement not to enforce a claim will not prevent time running unless a restriction on the operation of the limitation period is expressed in very clear terms: *Cave v EC (Holdings) Ltd* (1966) 110 Sol Jo 710.

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(4) THE EFFECT OF EXPIRY OF LIMITATION PERIODS

940. Claims to recover land or chattels.

At the expiration of the period prescribed for any person to bring a claim¹ under the Limitation Act 1980 to recover unregistered land (including a redemption claim) the title of that person to the land is extinguished².

At the expiration of the period prescribed for bringing a claim in respect of the conversion of a chattel, the title of the true owner is extinguished unless he has in the meantime recovered possession³.

1 As to the meaning of 'claim' see PARA 915.

2 See the Limitation Act 1980 s 17; and PARA 1095. The title of an owner of unregistered land will not be extinguished by s 17 unless there has been continuous adverse possession: see Sch 1 para 8(1); and PARA 1078. The title of an owner of registered land cannot be extinguished by mere inadvertence: see PARAS 1017, 1029 et seq. Exceptions to the general principle under s 17 are to be found (1) in the case of a claim to recover land by a tenant for life; and (2) where any land is held upon trust and the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by limitation: see s 18; and PARA 1096.

The effect of the Limitation Act 1980 s 17 is not to transfer the title of the original owner but only to extinguish it by barring the remedy: see *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510, [1962] 2 All ER 288, HL. If, however, throughout the period of limitation a single person has been in possession of land adversely to the true owner or if several persons claiming through one another have been in such possession, the Limitation Act 1980 s 17 confers on the person in possession at the expiration of the period an unimpeachable possessory title and if of sufficient length such title may be forced on a purchaser: see *Jacobs v Revell* [1900] 2 Ch 858; *Re Atkinson and Horsell's Contract* [1912] 2 Ch 1 at 11, 19, CA; cf however *George Wimpey & Co Ltd v Sohn* [1967] Ch 487, [1966] 1 All ER 232, CA.

3 See the Limitation Act 1980 s 3(2); and PARA 988.

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941. Claims in respect of defective products.

Special provision is made for limitation in the case of claims in respect of defective products, dealt with later in this title¹. However, any such claim is subject to a limitation 'longstop': no claim can be brought after the expiration of the period of ten years from the relevant time². The expiry of this limitation period longstop operates to extinguish a right of action itself at the end of the ten-year period, whether or not that right of action had accrued, or time under any other provision of the Limitation Act 1980 had begun to run³.

1 See the Limitation Act 1980 s 11A; and PARAS 1003-1004.

2 Limitation Act 1980 s 11A(3) (added by the Consumer Protection Act 1987 Sch 1 Pt I para 1). The relevant time is generally the date of supply of the product in question by the producer, the person holding himself out as producer or any person supplying the product within the European Community having obtained it from a producer outside a member state: see the Consumer Protection Act 1987 ss 2(2), 4.

3 Limitation Act 1980 s 11A(3) (as added: see note 2). The power of substitution under CPR 19.5(3)(a) (see PARA 937) applies to the ten-year limitation period under the Limitation Act 1980 s 11A(3) (see *Horne-Roberts v SmithKline Beecham plc* [2001] EWCA Civ 2006, [2002] 1 WLR 1662, 65 BMLR 79) but the question whether that power is consistent with EC law has been referred back to the European Court of Justice for a ruling (see *O'Byrne (by his mother and litigation friend) v Aventis Pasteur SA* [2008] UKHL 34, 102 BMLR 159, [2008] All ER (D) 123 (Jun)).

UPDATE

941 Claims in respect of defective products

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 3--The fact that a distributor is a wholly owned subsidiary is simply one factor to be taken into account by the court when assessing how closely a subsidiary is involved with its parent's business: *OB v Aventis Pasteur SA* [2010] UKSC 23, [2010] All ER (D) 242 (May).

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942. Barring of remedy not of right.

Except in the case of claims to recover unregistered land or to recover chattels or in respect of defective products¹, the Limitation Act 1980 extinguishes only the remedy (by claim² or by set-off³); it leaves the right of action otherwise untouched⁴. Thus a limitation period will normally operate to bar a claim only if successfully raised by way of defence⁵.

If a creditor whose debt is statute-barred has any means of enforcing his rights other than by claim or set-off, the 1980 Act does not prevent him from recovering by those means⁶. Thus, money paid to a creditor by the debtor without appropriation may be appropriated to the statute-barred debt⁷, although the creditor cannot so appropriate money received on behalf of, but without the knowledge of, the debtor⁸.

If a creditor has a legal lien for his debt, he may be able to enforce his lien after the debt is barred⁹. Thus, a solicitor's lien on documents in his hands for a statute-barred debt is not affected by the fact that the debt has become statute-barred¹⁰. However, no order can be made making solicitors' costs in a proceeding a charge on the property recovered or preserved, if the right to recover payment of such costs is barred¹¹. A security may be enforceable even though given in respect of a statute-barred debt¹². On the acquisition of freehold under the Leasehold Reform Act 1967, only six years' arrears of rent are recoverable by the landlord¹³.

The right which trustees have to be indemnified out of the trust estate extends to all solicitors' costs properly incurred by trustees, whether those costs are statute-barred or not, if the trustees have paid, or are willing to pay, those costs¹⁴.

If a solicitor improperly detains money due to a client, the fact that the client's right of action is statute-barred does not necessarily prevent the recovery of the money by means of the summary jurisdiction of the High Court¹⁵.

Statute-barred debts cannot be proved in bankruptcy¹⁶, nor can they normally be admitted in the liquidation of a company¹⁷. A personal representative is bound to plead a statute of limitation only if required to do so by someone who can require him to set it up¹⁸.

Where a charterparty incorporates the provision of the Hague-Visby Rules that any suit for loss or damage should be brought within one year¹⁹, the claim is entirely extinguished after the year if no proceedings have been brought²⁰.

1 le those falling within the Limitation Act 1980 s 3(2), s 11A(3), s 17: see PARAS 940-941.

2 As to the meaning of 'claim' see PARA 915.

3 See PARAS 915, 944.

4 Statute-barred debts are due, even though payment of them cannot be enforced by bringing a claim: *Curwen v Milburn* (1889) 42 ChD 424 at 434, CA, per Cotton LJ.

5 In his statement of case the defendant must give details of the expiry of any relevant limitation period relied on: see *Practice Direction--Statements of Case* PD 16 para 13.1. Where the remedy and not the right is barred, an application to strike out proceedings as disclosing no reasonable cause of action is misconceived, although in very clear cases the proceedings may be struck out as an abuse of process of the court: see *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398, [1982] 3 All ER 961, CA (decided under the previous rules). As to the trial of preliminary issues under the Limitation Act 1980 see PARA 951.

6 *Wainford v Barker* (1697) 1 Ld Raym 232; *Courtenay v Williams* (1844) 3 Hare 539 at 551; *Poole v Poole* (1871) 7 Ch App 17; *Re Milnes, Milnes v Sherwin* (1885) 53 LT 534. Thus a creditor who has in his hands securities belonging to a guarantor is entitled to hold them even if time has run against the principal debtor (*Carter v White* (1883) 25 ChD 666 at 672, CA) and a person who owes a statute-barred debt which was incurred as a result of the defendant's tort can recover the amount of the debt as damages in the claim on the tort (*Allen v Waters & Co* [1935] 1 KB 200, CA).

7 See **CONTRACT** vol 9(1) (Reissue) PARA 957; and PARA 1207.

8 *Waller v Lacy* (1840) 1 Man & G 54. A mortgagee who has appointed a receiver and who has received from him the rents and profits may not appropriate them to statute-barred arrears: *Hibernian Bank v Yourell (No 2)* [1919] 1 IR 310.

9 *Spears v Hartly* (1800) 3 Esp 81; *Higgins v Scott* (1831) 2 B & Ad 413; *Re Broomhead* (1847) 5 Dow & L 52; *Re Hepburn, ex p Smith* (1884) 14 QBD 394 at 399-400; see also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502; **LIEN** vol 68 (2008) PARA 820. As to the power of a personal representative to pay a statute-barred debt see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 392. It has been held that a bank has no lien on, but only a right of set-off in respect of, a customer's account (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 860), and if the debt is statute-barred, the right of set-off is not exercisable (see PARA 915). It seems that an equitable lien is a charge within the meaning of the Limitation Act 1980 s 20(1): see PARA 1106; and **LIEN** vol 68 (2008) PARA 814.

10 *Higgins v Scott* (1831) 2 B & Ad 413; *Re Murray* [1867] WN 190; *Re Carter, Carter v Carter* (1885) 55 LJ Ch 230.

11 Solicitors Act 1974 s 73(2).

12 *Richards v Curlewis* (1854) 3 Eq Rep 278.

13 *Re Howell's Application* [1972] Ch 509 at 511, [1972] 3 All ER 662 at 664. Arrears of rent which are statute-barred are not recoverable under the Leasehold Reform Act 1967 ss 9(5), 27(5): *Re Howell's Application*. See **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1465.

14 *Budgett v Budgett* [1895] 1 Ch 202. As to the assessment of statute-barred items in a solicitor's bill see *Re Brockman* [1909] 2 Ch 170, CA; *Curwen v Milburn* (1889) 42 ChD 424, CA.

15 *Ex p Sharpe* (1837) 5 Dowl 717. As to imposing the summary jurisdiction of the High Court in such matters see **LEGAL PROFESSIONS** vol 65 (2008) PARA 755.

16 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502. It seems that a bankruptcy petition cannot be founded on a statute-barred debt (see *Re Tynte, ex p Tynte* (1880) 15 ChD 125; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 131), but it would appear that only the person sought to be made bankrupt can object to the validity of bankruptcy proceedings on this ground (see *Quantock v England* (1770) 5 Burr 2638; *Ex p Dewdney* (1809) 15 Ves 479).

17 See **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARAS 758, 1000.

18 *Coombs v Coombs* (1866) LR 1 P & D 288 at 289; *Re Thomson's Mortgage Trusts, Thomson v Bruty* [1920] 1 Ch 508. The bankruptcy rules apply to the winding-up of an insolvent estate: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 399 et seq.

19 See PARA 912.

20 *Aries Tanker Corp v Total Transport Ltd* [1977] 1 All ER 398, [1977] 1 WLR 185, HL. See also PARA 912.

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(5) PRACTICE AND PROCEDURE

(i) Pleading

943. Position where the remedy is barred but not the right.

Where a statute of limitation bars the remedy and not the right¹ the defence of expiry of the limitation period under statute must be expressly pleaded, even if it appears on the face of the statement of claim that since the cause of action accrued the period of limitation has expired². Where the defendant has pleaded that the claim is time-barred, the burden is on the claimant to prove that the relevant limitation period has not expired³.

Where the remedy and not the right is barred, an application, on the basis that the claim is statute-barred, to strike out proceedings as disclosing no reasonable cause of action is misconceived, although in very clear cases the proceedings may be struck out as being an abuse of the process of the court⁴.

¹ See PARA 942.

² See *Practice Direction--Statements of Case* PD 16 para 13.1; and see *Dismore v Milton* [1938] 3 All ER 762, CA (statement of claim disclosing that since the cause of action accrued the period of limitation appears to have expired is not to be struck out); *Stile v Finch* (1634) Cro Car 381; *Hawkings v Billhead* (1635) Cro Car 404; *Chapple v Durston* (1830) 1 Cr & J 1; *Re Burge, Gillard v Lawrenson* (1887) 57 LT 364; see also *Eaton v Tapley* [1899] 1 QB 953, DC; *Gregory v Torquay Corp'n* [1912] 1 KB 442, CA (decisions under former rules). For an instance where a defendant was allowed to amend his pleading so as to plead a subsisting statute of limitation instead of one which had been repealed see *Harnett v Fisher* [1927] AC 573, HL. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

Where, pursuant to the Limitation Act 1980 s 35(1)(b), a new claim is made, that claim relates back, in so far as the commencement date is concerned, to the date of the original claim and the limitation issue should be raised by the defendant by relying on s 35(3) as a bar to the claim rather than by reference to the date when the claim arose: see *Kennett v Brown* [1988] 2 All ER 600, [1988] 1 WLR 582, CA.

³ See *London Congregational Union Inc v Harriss & Harriss* [1988] 1 All ER 15, CA; *Lloyds Bank plc v Burd Pearce (a firm)* [2001] All ER (D) 196 (Mar), CA. See further PARA 950.

⁴ *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398, [1982] 3 All ER 961, CA. As to striking out a statement of case, or part of a statement of case, see CPR 3.4; and **CIVIL PROCEDURE** vol 11 (2009) PARA 520. As to trial of preliminary issues under the Limitation Act 1980 see PARA 951.

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944. New claims in pending proceedings; set-off and counterclaim.

For the purposes of the Limitation Act 1980, any new claim made in the course of any proceedings is deemed to be a separate claim and to have been commenced:

- 31 (1) in the case of a new claim¹ made in or by way of third party proceedings², on the date on which those proceedings were commenced³; and
- 32 (2) in any other case, on the same date as the original claim⁴.

Except as provided under the 1980 Act⁵, or by rules of court⁶, neither the High Court nor any county court may allow a new claim within head (2) above, other than an original set-off or counterclaim⁷, to be made in the course of any claim after the expiry of any time limit under the 1980 Act which would affect a new claim to enforce that claim⁸. Rules of court may provide for allowing a new claim to which this provision⁹ applies to be made as there mentioned, but only if certain specified conditions are satisfied, and subject to any further restrictions the rules may impose¹⁰. The conditions specified are:

- 33 (a) in the case of a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original proceedings¹¹; and
- 34 (b) in the case of a claim involving a new party, if the addition or substitution of the new party is necessary¹² for the determination of the original claim¹³.

Rules of court may¹⁴ provide for allowing a party to any claim to claim relief in a new capacity in respect of a new cause of action notwithstanding that he had no title to make that claim at the date of the commencement of the claim¹⁵. The above provisions¹⁶ apply in relation to a new claim made in the course of third party proceedings as if those proceedings were the original claim, and subject to such other modifications as may be prescribed by rules of court in any case or class of case¹⁷.

These provisions apply to time limits applicable in certain circumstances under provisions relating to foreign limitation law¹⁸. They have, however, no application to the time limit contained in the Hague-Visby Rules, whether that limit becomes effective by contract or by statute under the Carriage of Goods by Sea Act 1971¹⁹.

1 A 'new claim' means any claim by way of set-off or counterclaim, and any claim involving either (1) the addition or substitution of a new cause of action; or (2) the addition or substitution of a new party: Limitation Act 1980 s 35(2). 'Set-off' in s 35 means legal set-off, and does not include equitable set-off: *Philip Collins Ltd v Davis* [2000] 3 All ER 808 at 831, [2000] IP & T 1167 at 1191 per Jonathan Parker J, following *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*, *Kleinwort Benson Ltd v Sandwell Borough Council* [1994] 4 All ER 890 at 943-944, 91 LGR 323 at 384-385 per Hobhouse J (varied on appeal [1994] 4 All ER 890, [1994] 1 WLR 938, CA; *revsd* without affecting that dictum [1996] AC 669, [1996] 2 All ER 961, HL). See also *Yorkshire Regional Health Authority v Fairclough Building Ltd* [1996] 1 All ER 519, [1996] 1 WLR 210, CA (substitution of National Health Service trust for claimant health authority not a new claim within the Limitation Act 1980 s 35(2)). As to change of parties see further PARA 937.

2 'Third party proceedings' means any proceedings brought in the course of any claim by any party to the claim against a person not previously party to the claim, other than proceedings brought by joining any such person as defendant to any claim already made in the original claim by the party bringing the proceedings: Limitation Act 1980 s 35(2).

3 Limitation Act 1980 s 35(1)(a).

4 Limitation Act 1980 s 35(1)(b).

5 le under the Limitation Act 1980 s 33: see PARAS 1001-1002.

6 The reference in the text to 'rules of court' is now to be read as a reference to the Civil Procedure Rules (the 'CPR'): see **CIVIL PROCEDURE** vol 11 (2009) PARAS 9, 30 et seq. For the relevant rules see CPR 17.4, CPR 19.5; and PARAS 931, 937.

7 A claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or, as the case may be, by way of counterclaim by a party who has not previously made any claim in the proceedings: Limitation Act 1980 s 35(3). A positive averment made by way of defence which does not seek any relief in respect of the averment does not constitute a claim in the proceedings for the purposes s 35(3): *JFS (UK) Ltd v Dwr Cymru Cyf* [1999] 1 WLR 231, [1999] BLR 17, CA.

8 Limitation Act 1980 s 35(3). See also *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 4 All ER 10, [1994] 1 WLR 1409, CA (overruling *Kennett v Brown* [1988] 2 All ER 600, [1988] 1 WLR 582, CA); followed in *Furini v Bajwa* [2004] EWCA Civ 412, [2004] 1 WLR 1971, [2004] All ER (D) 56 (Apr); and see *Mortgage Corp v Sharmar* (2 July 1999, unreported), CA; *JFS (UK) Ltd v Dwr Cymru Cyf* [1999] 1 WLR 231, [1998] All ER (D) 422, CA. Where amendments to a statement of claim have been approved in principle, but the specifics have been left for a later date, the amendments take effect when the order is drawn up, not when the judgment is given: *Furini v Bajwa*.

9 le the Limitation Act 1980 s 35(3).

10 Limitation Act 1980 s 35(4).

11 Limitation Act 1980 s 35(5)(a); and see *Goode v Martin* [2001] EWCA Civ 1899, [2002] 1 All ER 620, [2002] 1 WLR 1828 (unduly restrictive approach may be in breach of the Convention right to a fair trial under the Human Rights Act 1998 Sch 1 Pt I art 6), distinguished in *Cie Noga D'Importation et D'Exportation SA v Australia and New Zealand Banking Group Ltd (No 5)* [2005] EWHC 225 (Comm), [2005] All ER (D) 176 (Mar). See also *Steamship Mutual Underwriting Association Ltd v Trollope & Colls* (1986) 6 ConLR 11, 33 BLR 77, CA; *Fannon v Backhouse* (1987) Times, 22 August, CA (new claim must be material to the previous claim); *Stock v London Underground Ltd* (1999) Times, 13 August, [1999] All ER (D) 927, CA; *Charles Church Developments Ltd v Stent Foundations* [2006] EWHC 3158 (TCC), [2007] 1 WLR 1203.

A claim for a new remedy is not necessarily a new cause of action: *Lloyds Bank plc v Rogers* [1999] 3 EGLR 83, [1999] All ER (D) 808, CA (claim for a money judgment not a new claim). A claim for breach of a different duty from that originally pleaded will, however, usually raise a new cause of action: *Darlington Building Society v O'Rourke James Scourfield and McCarthy (a firm)* [1999] Lloyd's Rep PN 33, (1998) Times, 20 November, CA (claim by a building society alleging breaches of fiduciary duty and negligence against solicitors, who were acting for both lenders and borrowers in mortgage transactions, could not be amended after the expiry of the limitation period so as to include allegations of breaches of a different nature based on the solicitors' failure to disclose their knowledge of the borrower's fraud). Where a claimant pleads that the claim is governed by a different system of law from that previously alleged, there is a new cause of action since it is self evident that a claim made under the law of one state is a different cause of action to a claim made under the law of a different state: *Latreefers Inc v Hobson* [2002] EWHC 1586 (Ch), [2002] All ER (D) 375 (Jul). See also *Trade Development Bank v Deutsche Lufthansa AG* (3 December 1990, unreported), CA (amendment made solely for the purpose of allowing the claimants to escape the limitation on liability otherwise imposed by the Warsaw Convention was not a new cause of action); *Anthony Stephen De Silva Farmer v Wood and Kingsford Dorman (a firm)* (7 July 2000, unreported), CA (no new cause of action where claim formerly vested in the claimant and his wife vested, by assignment, wholly in the claimant); *Hoechst UK Ltd v IRC* [2003] EWHC 1002 (Ch), [2004] STC 1486, [2003] All ER (D) 198 (Apr) (claim for repayment of overpaid tax for years 1989-1994; a claim for 1995 could not be added, as this was a new cause of action arising out of different facts); *Maridive & Oil Services (SAE) v CNA Insurance Co (Europe) Ltd* [2002] EWCA Civ 369, [2002] 1 All ER (Comm) 653, [2002] 2 Lloyd's Rep 9 (two separate demands on the same bond did not arise from the same or substantially the same facts); *Finlan v Eytton Morris Winfield (a firm)* [2007] EWHC 914 (Ch), [2007] 4 All ER 143 (assignment of cause of action after issue of claim form; new causes of action in the sense intended by 'new claim' in the Limitation Act 1980 s 35(5)(a) as the first claimant's title to sue was an essential part of his causes of action; but the new claims arose out of substantially the same facts as the existing claims, the only difference being the need to plead and rely on the deed of assignment as giving to the first claimant the right to bring claims in the second claimant's stead).

12 The addition or substitution of a new party is not to be regarded as necessary for the determination of the original claim unless either (1) the new party is substituted for a party whose name was given in any claim made in the original claim in mistake for the new party's name; or (2) any claim already made in the original claim cannot be maintained by or against an existing party unless the new party is joined or substituted as claimant or defendant in that claim: Limitation Act 1980 s 35(6). The mistake does not necessarily have to be

one of identity: *O'Byrne v Aventis Pasteur MSD Ltd* [2007] EWCA Civ 966, [2008] 1 WLR 1188, 98 BMLR 160 (claimant wrongly believed original defendant was manufacturer of vaccine which caused him brain damage). Where the limitation period to amend a claim form and particulars of claim has expired, there is no jurisdiction under CPR 19.5 (see PARA 937) or in the Limitation Act 1980 s 35 to allow additional claimants to join the original claim: *Adelson v Associated Newspapers* [2007] EWCA Civ 701, [2007] 4 All ER 330, [2008] 1 WLR 585.

13 Limitation Act 1980 s 35(5)(b).

14 Ie subject to the Limitation Act 1980 s 35(4); see the text to notes 9-10.

15 Limitation Act 1980 s 35(7). This provision is not to be taken as prejudicing the power of rules of court to provide for allowing a party to claim relief in a new capacity without adding or substituting a new cause of action: s 35(7).

16 Ie the Limitation Act 1980 s 35(3)-(7).

17 Limitation Act 1980 s 35(8).

18 See the Foreign Limitation Periods Act 1984 s 1(1)(a), (3); PARA 1235 et seq; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 26.

19 See *Payabi v Armstel Shipping Corpn, The Jay Bola* [1992] QB 907 at 924, [1992] 3 All ER 329 at 342-343 per Hobhouse J. As to the Hague-Visby Rules see PARA 912. This position is similar under the Patents Act 1977 s 37(5) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 367); see *Rhone-Poulenc Rorer International Holdings Inc v Yeda Research and Development Co Ltd* [2006] EWHC 160 (Ch), [2006] RPC 605, [2006] All ER (D) 223 (Feb); affd [2006] EWCA Civ 1094, [2006] RPC 167, [2006] All ER (D) 464 (Jul); revsd on other grounds [2007] UKHL 43, [2008] 1 All ER 425, (2007) Times, 30 October.

UPDATE

944 New claims in pending proceedings; set-off and counterclaim

NOTE 7--The nature of the cause of action on which the counterclaim is founded is not integral to the concept of 'counterclaim'; all that matters is that all the parties requisite to assert the cause of action are on one side of the record and one of the persons against whom the cause of action may be asserted is on the other side: *Law Society of England and Wales v Wemyss* [2008] EWHC 2515 (Ch), [2009] 1 All ER 752.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(i) Pleading/945. Pleading the statute; the burden of proof.

945. Pleading the statute; the burden of proof.

A defence of limitation must be specifically pleaded¹. Trustees may be under a duty to plead such a defence².

Where the defendant has pleaded that the claim is time-barred under the statute, the burden of proving that the cause of action arose within the statutory period lies on the claimant³. A denial that the claim is so time-barred only puts in issue the time at which the cause of action accrued. Therefore, if the claimant relies upon the existence of any disability⁴ as taking the case out of the statute, he must reply alleging such disability specially; and the reply should aver the existence of the disability at the time of the accrual of the cause of action, and also that the claim was begun within the proper period of the termination of the disability or while the disability was still subsisting⁵.

1 See *Practice Direction--Statements of Case* PD 16 para 13.1; *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398, [1982] 3 All ER 961, CA; *Ketteman v Hansel Properties* [1987] AC 189, [1988] 1 All ER 38, HL; and PARA 943.

2 See *A-G v Trustees of the British Museum (Commission for Looted Art in Europe intervening)* [2005] EWHC 1089 (Ch), [2005] Ch 397, [2005] All ER (D) 463 (May). See also *Re Thomson's Mortgage Trusts, Thomson v Bruty* [1920] 1 Ch 508.

3 See *Haward v Fawcetts (a firm)* [2006] UKHL 9, [2006] 3 All ER 497, [2006] 1 WLR 682, HL; *Lloyds Bank plc v Burd Pearce (a firm)* [2001] All ER (D) 196 (Mar), CA; *London Congregational Union Inc v Harriss & Harriss* [1988] 1 All ER 15, CA; *Cartledge v Jopling & Sons Ltd* [1963] AC 758 at 784, [1963] 2 WLR 210 at 224, HL; *Wilby v Henman* (1834) 2 Cr & M 658; *Beale v Nind* (1821) 4 B & Ald 568 at 571; *Hurst v Parker* (1817) 1 B & Ald 92. See also *Maugham v Walker* (1790) 2 Peake 220. Compare *Barclays Bank plc v Walters* (1988) Times, 20 October, CA. As to the burden of proof see also *Holland v Yates Building Co Ltd* (1989) Times, 5 December, CA; *Driscoll-Varley v Parkside Health Authority* [1991] 2 Med LR 346; *Society of Lloyd's v Laws* [2004] EWHC 71 (Comm) at [34], [2004] All ER (D) 277 (Jan).

4 As to disability generally see PARA 1170 et seq.

5 As to filing a reply to defence see CPR 15.8; and **CIVIL PROCEDURE** vol 11 (2009) PARA 604.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(i) Pleading/946. Pleading acknowledgment or part payment.

946. Pleading acknowledgment or part payment.

Where there is an acknowledgment in writing or part payment, the cause of action¹ accrues afresh². Where title would be extinguished but for such an acknowledgment or part payment, it would appear that the acknowledgment or part payment should be alleged in the statement of claim as part of the cause of action. That course would also seem desirable where only the remedy is barred; but in such a case an alternative course, which would not, it is thought, be wrong, would be to plead the acknowledgment or part payment in the reply³. If the original cause of action is a debt due from two persons jointly, and the promise relied on is a promise by one to pay his proportion, this must be sued on specially, and cannot be used in a claim against both to defeat a defence of the statute pleaded by the one who made the new promise⁴. Where an acknowledgment or part payment is made by or to an agent or other person in a representative capacity, the pleading should allege sufficient facts to bring the case within the relevant statutory provisions⁵.

1 As to the meaning of 'claim', and the phrase 'cause of action', see PARA 915.

2 See the Limitation Act 1980 ss 29-31; and PARA 1181 et seq. It has been held that a mortgagee's claim to recover a sum secured by a mortgage, which is otherwise barred by the Limitation Act 1980, may be revived by the payment of mortgage interest by the Benefits Agency to the mortgagee as an agent of the mortgagor, even if the payment is not authorised by the mortgagor: see *Bradford and Bingley plc v Cutler* (2008) Times, 22 February, CA. Not all claims are subject to extension by acknowledgment, eg a claim for contribution between joint wrongdoers under the Civil Liability (Contribution) Act 1978 will not be extended by acknowledgment (Limitation Act 1980 s 10(5)); neither will a claim under the Fatal Accidents Act 1976 (Limitation Act 1980 s 12(3)).

3 As to filing a reply to defence see CPR 15.8; and **CIVIL PROCEDURE** vol 11 (2009) PARA 604.

4 *Lechmere v Fletcher* (1833) 1 Cr & M 623 at 626n; *Pittam v Foster* (1823) 1 B & C 248; cf *Beck v Pierce* (1889) 23 QBD 316 at 322, CA. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

5 See the Limitation Act 1980 ss 29-31; and PARA 1181 et seq.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(i) Pleading/947. Suing some only of persons liable.

947. Suing some only of persons liable.

If there are several persons originally liable on a contract and one or more of such persons can take advantage of a statute of limitation and the others cannot, those persons to whom the defence of the statute is not open may, it seems, be sued without joining the others¹.

1 See the Limitation Act 1980 s 31(6); PARA 1217; and **CONTRACT** vol 9(1) (Reissue) PARAS 1080-1081.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(i) Pleading/948. Fraud.

948. Fraud.

Where fraud, deliberate concealment or mistake is relied upon as postponing the limitation period, it must be sufficiently alleged in the pleading to bring the case within the appropriate statutory provision¹.

¹ See the Limitation Act 1980 s 32; and PARA 1220 et seq. It would seem that where only the remedy would have been barred the plea of fraud, deliberate concealment or mistake not discovered may be alleged in either the statement of claim or reply to defence; but where the title is barred as well as the remedy it is part of the cause of action to be alleged in the statement of claim: see *Gibbs v Guild* (1881) 8 QBD 296 (affd (1882) 9 QBD 59, CA); *Lynn v Bamber* [1930] 2 KB 72; and *Lawrance v Lord Norreys* (1890) 15 App Cas 210, HL. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(i) Pleading/949. Amendment in case of omission to plead limitation by statute.

949. Amendment in case of omission to plead limitation by statute.

A party may amend his statement of case at any time before it has been served on any other party¹. If his statement of case has been served, a party may amend it only with the written consent of all the other parties or with the permission of the court².

1 See CPR 17.1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 607.

2 See CPR 17.2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 607. The court's power to give permission is subject to: (1) CPR 19.1 (change of parties generally: see **CIVIL PROCEDURE** vol 11 (2009) PARA 210); (2) CPR 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period: see PARA 937); and (3) CPR 17.4 (amendments of statement of case after the end of a relevant limitation period: see PARA 931); CPR 17.3(2). It has been said to be a guiding principle that generally speaking all amendments ought to be made 'as may be necessary for the purpose of determining the real controversy between the parties': *GL Baker Ltd v Medway Building & Supplies Ltd* [1958] 3 All ER 540 at 546, [1958] 1 WLR 1216 at 1231. Cf, however, *Ketteman v Hansel Properties Ltd* [1987] AC 189, [1988] 1 All ER 38, HL (distinction drawn between amendments to clarify existing issues in dispute and amendments which sought to raise a new defence for the first time; no rule of practice of invariably allowing a new defence to be raised by amendment at the end of the trial subject to adjournment and payment of costs; matter in judge's discretion according to the justice of the case). As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33. The court must now exercise its discretion in order to give effect to the overriding objective of the CPR: see CPR 1.2(a). As to the overriding objective see CPR 1.1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(ii) Other Procedural Issues/950. Limitation as a defence.

(ii) Other Procedural Issues

950. Limitation as a defence.

Statutory limitation periods generally bar the remedy only and not the claim itself¹; thus a defendant must raise his contention of a limitation bar expressly in his defence in order for the limitation period to operate². The statutory provision which it is contended applies to the claim is set out within the pleading and any particulars as to knowledge or facts required to support that knowledge must also be clearly set out³.

The court may strike out⁴ a statement of case⁵ if it appears to the court:

- 35 (1) that the statement of case discloses no reasonable grounds for bringing or defending the claim⁶;
- 36 (2) that the statement of case is an abuse of the court's process⁷ or is otherwise likely to obstruct the just disposal of the proceedings⁸; or
- 37 (3) that there has been a failure to comply with a rule, practice direction or court order⁹.

When the court strikes out a statement of case it may make any consequential order it considers appropriate¹⁰.

Where there is a possibility that future legislation may remove the bar to a time-barred claim, the court may order a stay of proceedings rather than striking out the claim¹¹.

1 See PARA 942. As to the exceptions to this general rule see PARAS 940-941.

2 See *Practice Direction--Statements of Case* PD 16 para 13.1; and *Ketteman v Hansel Properties Ltd* [1987] AC 189 at 219, [1988] 1 All ER 38 at 61, HL, per Lord Griffiths. 'It cannot be predicted that the defendant will appeal to the statute of limitations for his protection; many people, or some people at all events, do not do so: therefore you must wait to hear from the defendant whether he desires to avail himself of the defence of the statute of limitations or not': *Dawkins v Lord Penrhyn* (1878) 4 App Cas 51 at 59, HL. As to the burden of proof see PARA 945.

3 See further PARA 943.

4 'Striking out' means the court ordering written material to be deleted so that it may no longer be relied upon: see CPR 2.2, Glossary.

5 For these purposes, reference to a statement of case includes reference to part of a statement of case: CPR 3.4(1).

6 See CPR 3.4(2)(a); and **CIVIL PROCEDURE** vol 11 (2009) PARA 520. In most cases the defence of limitation only bars the remedy and does not extinguish the right; thus a claim which is time-barred does normally disclose a cause of action: *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398, [1982] 3 All ER 961, CA. As to the caution to be exercised in applying pre-CPR authorities see **CIVIL PROCEDURE** vol 11 (2009) PARA 33.

7 See eg *McDonnell v Congregation of Christian Brothers Trustees* [2003] EWCA Civ 2095, [2001] All ER (D) 488 (Oct); affd [2003] UKHL 63, [2004] 1 AC 1101, [2004] 1 All ER 641 (by virtue of the Limitation Act 1980 Sch 2 para 9 (see PARA 902), the defendants had an accrued limitation defence to which there was no answer; claim struck out as an abuse of process).

8 See CPR 3.4(2)(b); and **CIVIL PROCEDURE** vol 11 (2009) PARA 520. As to striking out on such grounds under the previous rules see *Riches v DPP* [1973] 2 All ER 935, [1973] 1 WLR 1019, CA.

9 See CPR 3.4(2)(c); and **CIVIL PROCEDURE** vol 11 (2009) PARA 520. In cases in which a claim is struck out pursuant to CPR 3.4(2)(c) (see head (3) in the text), the date at which the opportunity to pursue a claim is lost is usually on the date that there is a failure to comply with the relevant procedural requirement, as opposed to the actual date of strike out: *Khan v RM Falvey & Co* [2002] EWCA Civ 400, [2002] Lloyd's Rep PN 369, [2002] All ER (D) 361 (Mar), per curiam.

10 See CPR 3.4(3); and **CIVIL PROCEDURE** vol 11 (2009) PARA 520.

11 See *Sparks v Harland* [1997] 1 WLR 143. See also *Hill v CA Parsons & Co Ltd* [1972] Ch 305, [1971] 3 All ER 1345, CA; cf *Willow Wren Canal Carrying Co Ltd v British Transport Commission* [1956] 1 All ER 567, [1956] 1 WLR 213 (distinguished in *Sparks v Harland*). As to the caution to be exercised in applying pre-CPR authorities see, however, **CIVIL PROCEDURE** vol 11 (2009) PARA 33. As to the power to stay proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 529 et seq.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/1. STATUTORY TIME-BARS ON CIVIL PROCEEDINGS/(5) PRACTICE AND PROCEDURE/(ii) Other Procedural Issues/951. Limitation as a preliminary issue.

951. Limitation as a preliminary issue.

Under the court's general powers of case management, it may direct a separate trial of any issue¹ and may decide the order in which issues are to be tried². This enables the separate trial of preliminary issues in relation to limitation. In the multi-track³, the topics which the court will consider at a case management conference are likely to include whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues⁴.

The ability to try preliminary issues in relation to limitation is particularly useful in claims in respect of personal injuries, death and defective products where two issues are commonly dealt with in this way:

- 38 (1) an issue upon the 'date of knowledge'⁵;
- 39 (2) the disapplication of the time limits pursuant to the court's discretion under the Limitation Act 1980⁶.

An issue as to whether a foreign limitation period applies may also be tried as a preliminary issue⁷.

As an alternative to proposing the trial of preliminary issues in relation to limitation, the defendant may issue an application for summary judgment on the limitation issue⁸. The court may give summary judgment against a claimant in any type of proceedings, if:

- 40 (a) it considers that that claimant has no real prospect of succeeding on the claim or issue;
- 41 (b) there is no other compelling reason why the case or issue should be disposed of at a trial⁹.

1 See CPR 3.1(2)(i); and **CIVIL PROCEDURE** vol 11 (2009) PARA 247.

2 See CPR 3.1(2)(j); and **CIVIL PROCEDURE** vol 11 (2009) PARA 247.

3 As to the multi-track see **CIVIL PROCEDURE** vol 11 (2009) PARA 293 et seq.

4 See *Practice Direction--The Multi-Track* PD 29 para 5.3(7). Other specific provision is made with regard to preliminary issues: see eg *Practice Direction--Technology and Construction Court Claims* PD 60 para 8.6(3) (directions for the trial of preliminary issues).

5 See the Limitation Act 1980 ss 11, 11A, 12, 14, 14A; and PARA 998 et seq. For an example of the trial of such a question as a preliminary issue see *Harris Springs Ltd v Howes* [2007] EWHC 3271 (TCC), [2008] BLR 229, [2008] All ER (D) 60 (Feb).

6 See the Limitation Act 1980 s 33; and PARAS 1001-1002. Note that under s 33 the court is required to 'have regard to all the circumstances of the case'.

7 See eg *Connelly v Rio Tinto plc* (4 December 1998, unreported), QBD.

8 As to summary judgment see CPR Pt 24; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 524-528.

9 See CPR 24.2(a)(i), (b), 24.3(1).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(i) In general/952. Normal periods of limitation.

2. PARTICULAR CAUSES OF ACTION

(1) CONTRACT, TORT AND OTHER CLAIMS

(i) In general

952. Normal periods of limitation.

The primary period of limitation¹ is six years from the accrual of the cause of action² for a claim founded on simple contract³ (including such a claim brought in reliance on the rights conferred on a third party to a contract⁴ by the Contracts (Rights of Third Parties) Act 1999⁵) or a claim founded on tort⁶, for a claim to enforce an award⁷, for a claim to recover any sum recoverable by virtue of any enactment⁸ and for a claim for breach of commonhold duty⁹.

Special time limits apply in the following claims:

- 42 (1) claims brought in the tort of negligence where the damages claimed could not have been discovered at the date of accrual¹⁰;
- 43 (2) claims for damages for negligence, nuisance or breach of duty where the damages claimed by the claimant for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries, including claims for damages for an intentional trespass to the person¹¹;
- 44 (3) claims in respect of defective products¹²;
- 45 (4) claims for defamation and malicious falsehood¹³; and
- 46 (5) claims for the recovery of property under the Proceeds of Crime Act 2002¹⁴.

In the absence of special statutory provision to the contrary¹⁵, the period prescribed for the recovery of sums recoverable by virtue of any enactment applies to the exclusion of the 12-year period laid down for claims upon specialties, even though the claim is technically upon a statute and therefore upon a specialty¹⁶.

A claim for an account must not be brought in respect of any matter which arose before the expiration of any time limit under the legislation which is applicable to the claim which is the basis of the duty to account¹⁷. The six-year limitation period is also in certain cases applied by analogy to claims for equitable relief although in general the limitation periods do not apply to such claims¹⁸. No arrears of interest in respect of any judgment debt are recoverable after the expiration of six years from the date on which the interest became due¹⁹.

1 The provisions of the Limitation Act 1980 Pt I (ss 1-27B), which prescribe primary periods of limitation, have effect subject to the provisions of Pt II (ss 28-33), which provide for the extension of the periods of limitation in cases of disability, acknowledgment, part payment, fraud, concealment or mistake: see s 1(2); and PARA 1168 et seq.

2 As to the meaning of 'claim' see PARA 915.

3 Limitation Act 1980 s 5. However, s 5 does not bar the right of action on certain contracts of loan: see s 6; and PARA 960. As to claims on contracts generally see further PARA 955 et seq.

4 I.e. a claim brought in reliance on the Contracts (Rights of Third Parties) Act 1999 s 1: see **CONTRACT**.

5 Contracts (Rights of Third Parties) Act 1999 s 7(3).

6 Limitation Act 1980 s 2. If the claim is for damages for negligence, nuisance or breach of duty (including claims for damages for an intentional trespass to the person), and the damages include damages for personal injuries or death, the period is in general three years: see ss 11-12; *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1, (overruling *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL); and PARAS 998-1000. As to claims based on tort generally see PARA 979 et seq.

7 Limitation Act 1980 s 7; and see PARA 974. Time runs from breach of the implied term to perform the award, not from accrual of the original cause of action: *Agromet Motoimport v Maulden Engineering Co (Beds) Ltd* [1985] 2 All ER 436, [1985] 1 WLR 762.

8 Limitation Act 1980 s 9(1). See also *China v Harrow UDC* [1954] 1 QB 178, [1953] 2 All ER 1296, DC (arrear of rates); and *West Riding of Yorkshire County Council v Huddersfield Corpn* [1957] 1 QB 540, [1957] 1 All ER 669 (sum ascertained by statutory arbitration).

9 See the Limitation Act 1980 s 19A; and PARA 1015.

10 See the Limitation Act 1980 ss 14A-14B; and PARA 982.

11 See the Limitation Act 1980 ss 11, 12; *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1 (overruling *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL); and PARAS 998, 1000.

12 See the Limitation Act 1980 s 11A; and PARA 1003.

13 See the Limitation Act 1980 s 4A (no claim for defamation or malicious falsehood may generally be brought after the expiration of one year from the date when the cause of action accrued); and PARA 996.

14 See the Limitation Act 1980 ss 27A, 27B (limitation period of 12 years from accrual of the cause of action); and PARAS 1013-1014.

15 For examples of sums which are by statute declared to be specialty debts see the Companies Act 1985 s 14(2) (prospectively repealed); and PARA 976. For examples of sums which are by statute declared to be simple contract debts see the Companies Act 2006 s 33(2) (not yet in force); and PARA 957.

16 See the Limitation Act 1980 ss 8(2), 9; and PARA 975 note 6. See also *Central Electricity Board v Halifax Corpn* [1963] AC 785, [1962] 3 All ER 915, HL (claim under the Electricity Act 1947 (repealed) for funds in hands of authorised undertaker before Act barred after six years); *Pegler v Great Western Rly Co* [1947] 1 All ER 355, CA (affd sub nom *Pegler v Railway Executive* [1948] AC 332, [1948] 1 All ER 559, HL). It seems that a claim against a police authority under the Riot (Damages) Act 1886 (see **POLICE** vol 36(1) (2007 Reissue) PARA 173 et seq) would fall under the Limitation Act 1980 s 9(1); for the former position see *Jarvis v Surrey County Council* [1925] 1 KB 554. As to specialties see generally *Collin v Duke of Westminster* [1985] QB 581, [1985] 1 All ER 463, CA; and PARA 975 et seq.

17 Limitation Act 1980 s 23; and see PARA 1008. It is the equitable remedy of account which must be referred to, since the common law claim of account is obsolete: see *Tito v Waddell (No 2)* [1977] Ch 106 at 250, [1977] 3 All ER 129 at 248 per Megarry V-C. See also *Friend v Young* [1897] 2 Ch 421 at 431.

18 See the Limitation Act 1980 s 36; and PARA 954.

19 Limitation Act 1980 s 24(2); and see PARAS 953, 1010.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
 PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(i) In general/953.
 Claims upon specialties and judgments.

953. Claims upon specialties and judgments.

A claim¹ upon a specialty² must not be brought after the expiration of 12 years from the date on which the cause of action accrued³. This includes a claim relating to a speciality brought in reliance on the rights conferred on a third party to a contract⁴ by the Contracts (Rights of Third Parties) Act 1999⁵.

A claim must not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable⁶ and no arrears of interest in respect of any judgment debt can be recovered after the expiration of six years from the date on which the interest became due⁷. In the case of a foreign judgment the period appears also to be six years⁸.

1 As to the meaning of 'claim' see PARA 915.

2 As to the meaning of 'specialty' see PARA 976.

3 Limitation Act 1980 s 8(1). This provision does not affect any claim for which a shorter period of limitation is prescribed by any other provision of the Act: s 8(2). See also *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA; and PARA 975 et seq. A mortgagor's claim for damages against a mortgagee for failure to obtain a proper price when selling the mortgaged property does not fall within the Limitation Act 1980 s 8 as a claim founded on a speciality (the legal charge) since the mortgagor's duty is an equitable duty; the correct limitation period is six years as applied by analogy in accordance with s 36 (see PARA 954): *Raja v Lloyds TSB Bank plc* [2001] EWCA Civ 210, 82 P & CR 191, [2001] All ER (D) 160 (Jan).

4 I.e. a claim brought in reliance on the Contracts (Rights of Third Parties) Act 1999 s 1: see **CONTRACT**.

5 Contracts (Rights of Third Parties) Act 1999 s 7(3).

6 Limitation Act 1980 s 24(1). 'Enforceable' means enforceable by claim on the judgment, not by execution: see *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 at 293, [1971] 2 All ER 117 at 126 (affd [1971] 2 QB 463, [1971] 2 All ER 1513, CA); *Lowsley v Forbes (t/a LE Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL. A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify: CPR 40.7(1). This applies to all judgments and orders except those to which CPR 40.10 (judgment against a state) applies: CPR 40.7(2). It has, however, been held that costs orders become enforceable, and the time limit starts to run for the purposes of the Limitation Act 1980 s 24, when the costs are quantified and certified by the process of assessment: *Re a Debtor (No 2672 of 2000)* [2000] 42 LS Gaz R 43, (2000) Times, 5 December.

7 Limitation Act 1980 s 24(2). This applies to bar recovery of interest by execution after six years in respect of all judgments, since 'recovers' has a broad meaning and is not confined to recovery by fresh proceedings: *Lowsley v Forbes (t/a LE Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL. See further PARA 1010.

8 *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2 QB 463 at 470, [1971] 2 All ER 1513 at 1517, CA; and see PARA 957. See also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 140.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(i) In general/954.
Exclusion of limitation periods.

954. Exclusion of limitation periods.

The general periods of limitation¹ do not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief², except in so far as any limitation period may be applied by the court by analogy³ in like manner as formerly a corresponding enactment repealed by the Limitation Act 1980 was applied⁴.

1 Ie those contained in the Limitation Act 1980 ss 2, 4A, 5, 7-9, 24: see PARAS 952-953.

2 A claim by a chargee of land for the sale and application of the proceeds in payment of the sum charged is an example of other equitable relief (*Poole Corpn v Moody* [1945] KB 350, sub nom *Moody v Poole Corpn* [1945] 1 All ER 536, CA) as is a mortgagor's claim for damages against a mortgagee for failure to obtain a proper price when selling the mortgaged property (*Raja v Lloyds TSB Bank plc* [2001] EWCA Civ 210, 82 P & CR 191, [2001] All ER (D) 160 (Jan)).

3 As to the application of limitation periods by analogy see **EQUITY** vol 16(2) (Reissue) PARAS 919-920. Claims for specific performance fall outside that principle: see *P & O Nedlloyd BV v Arab Metals Co* [2006] EWCA Civ 1717, [2007] 2 All ER (Comm) 401, [2007] 1 WLR 2288. As to the application of the equitable doctrine of acquiescence and laches see PARA 906; and as to claims for equitable relief see further PARA 919.

4 Limitation Act 1980 s 36(1) (amended by the Administration of Justice Act 1985; and the Defamation Act 1996 s 5(1), (5), (6)); cf *Poole Corpn v Moody* [1945] KB 350, sub nom *Moody v Poole Corpn* [1945] 1 All ER 536, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/955. Meaning of 'simple contract'.

(ii) Contract

A. SIMPLE CONTRACT

955. Meaning of 'simple contract'.

'Simple contract' includes all contracts which are not contracts of record or specialties. It has been defined by Blackstone as 'where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by deed or special instrument, but by mere oral evidence, the most simple if any; or by notes unsealed, which are capable of more easy proof, and therefore only better than a verbal promise'¹.

¹ 2 Bl Com 465. The words 'founded on simple contract' are sufficiently broad to include a claim for money had and received: see *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1994] 4 All ER 890, [1994] 1 WLR 938, CA (on appeal [1996] AC 669, [1996] 2 All ER 961, HL); and see *Deutsche Morgan Grenfell Group plc v IRC* [2006] UKHL 49, [2007] 1 AC 558, [2007] 1 All ER 449 (claim for repayment of tax restitutionary in nature; fell within the Limitation Act 1980 s 5 (see PARA 956) as founded on simple contract); cf *Kleinwort Benson Ltd v Glasgow City Council* [1999] 1 AC 153, [1997] 4 All ER 641, HL (status of claims under interest swap agreements; neither contractual nor tortious for purposes of private international law).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/956. The general limitation period.

956. The general limitation period.

A limitation period of six years from the date on which the cause of action accrued¹ applies to all claims founded on simple contract², including such claims brought in reliance on the rights conferred on a third party to a contract³ by the Contracts (Rights of Third Parties) Act 1999⁴. Accordingly, if a claim is not brought within six years of the relevant breach it will be barred.

1 In the case of claims founded on contract time runs from the date of breach of the contract: *Gould v Johnson* (1702) 2 Salk 422; *East India Co v Odithurn Paul* (1850) 7 Moo PCC 85; *Gibbs v Guild* (1881) 8 QBD 296 at 302 per Field J. As to breach by non-feasance see *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp* [1979] Ch 384, [1978] 3 All ER 571. See further PARA 958.

2 Limitation Act 1980 s 5. The period of limitation fixed by s 5 should be read subject to and together with the following provisions in particular: s 6 (special time limit for claims in respect of certain loans: see PARA 960); ss 11, 14, 33 (special time limits in claims for damages in respect of personal injuries: see PARA 998 et seq); s 28 (disabilities: see PARA 1171); s 32 (fraud, concealment or mistake: see PARAS 1220-1222); s 36 (equitable jurisdiction and remedies: see PARA 954); s 39 (see PARA 918); and the Limitation (Enemies and War Prisoners) Act 1945 (see PARAS 1232-1234).

3 In a claim brought in reliance on the Contracts (Rights of Third Parties) Act 1999 s 1: see **CONTRACT**.

4 Contracts (Rights of Third Parties) Act 1999 s 7(3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/957. Instances of simple contract debts.

957. Instances of simple contract debts.

The six-year period of limitation laid down for claims founded on simple contract¹ applies:

- 47 (1) to the personal remedy on a simple contract debt which is charged on land²;
- 48 (2) to a simple contract debt which is recited in a deed, unless there is in the deed an express or implied contract to pay it³;
- 49 (3) to a claim against the equitable assignee of leaseholds in possession, grounded on his liability to perform the covenants in the lease⁴;
- 50 (4) to a claim founded on a foreign judgment⁵;
- 51 (5) to a claim for a penalty under a byelaw of a chartered company⁶; and
- 52 (6) to a claim for indemnity under the enactments relating to registered land⁷.

It seems that restitutionary claims for money had and received may also be regarded as founded on a simple contract⁸.

1 See PARAS 952, 955.

2 See PARA 1105.

3 *Ivens v Elwes* (1854) 3 Drew 25 at 34.

4 *Sanders v Benson* (1841) 4 Beav 350.

5 *Dupleix v De Roven* (1705) 2 Vern 540; and see *Wilson v Lady Dunsany* (1854) 18 Beav 293, disapproved on another point in *Re Kloebe, Kannreuther v Geiselbrecht* (1884) 28 ChD 175 at 180; *Reimers v Druce* (1857) 23 Beav 145; *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 2 QB 463 at 470, [1971] 2 All ER 1513 at 1517, CA (an ascertainment of debt, having effect as an unappealable judgment, was entered in German bankruptcy proceedings; time began to run from the date of entry even though execution could not be levied until termination of the bankruptcy); PARA 953 note 8; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 140. As to a claim on an English judgment see PARAS 953, 1010.

6 *Tobacco Pipe Makers' Co v Loder* (1851) 16 QB 765.

7 See the Land Registration Act 2002 Sch 8 para 8(a); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 983.

8 See PARA 955 note 1; and see also *Re Diplock, Diplock v Wintle* [1948] Ch 465 at 514, [1948] 2 All ER 318 at 343, CA (affd sub nom *Ministry of Health v Simpson* [1951] AC 251, [1951] 2 All ER 1137, HL). As to claims for money had and received see **RESTITUTION** vol 40(1) (2007 Reissue) PARAS 5, 78, 79. A 12-year period is, however, applicable by virtue of the Limitation Act 1980 s 22 to a claim to recover assets forming part of the estate of a deceased person from persons wrongly paid or overpaid: see PARA 1161; and **EQUITY** vol 16(2) (Reissue) PARA 866.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/958. Accrual of the cause of action; in general.

958. Accrual of the cause of action; in general.

In a claim for breach of a simple contract the cause of action is the relevant breach¹ and not the time of damage, as a breach of contract is actionable in itself. Accordingly such a claim must be brought within six years of a breach²; after the expiration of that period the claim will be barred, although damage may have accrued to the claimant within six years of claim brought³. In such a claim it is not necessary to prove actual damage, and special damage is merely alleged as a measure of the damages to be recovered⁴. Although time may be extended for the reasons dealt with subsequently in this title⁵, it is not extended merely by the fact that the breach has not been discovered or that damage has not resulted⁶ until after the expiration of six years⁷.

1 *Gould v Johnson* (1702) 2 Salk 422; *East India Co v Oditchurn Paul* (1850) 7 Moo PCC 85. As to a breach by non-feasance see PARA 959. Where there is a continuing relationship between the parties with regard to the subject-matter of the breach, a continuing duty will arise with the result that time will run from the latest date on which the default could have been remedied: see *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp* [1979] Ch 384, [1978] 3 All ER 571 (omission by solicitors to register option to purchase land as an estate contract; duty to register the option continued to bind the solicitors until the date at which it became impossible to perform, and it was at that date that the contract was broken). If an anticipatory breach (ie a clear and unequivocal manifestation by a contracting party that he will not perform his contractual obligation when it falls due), is accepted as a breach, time will run from the date when the intention not to perform is manifested, rather than the (later) date of due performance, since the right to sue in respect of the breach occurs at this earlier date: see *Hochster v de la Tour* (1853) 2 E & B 678; *Lefevre v White* [1990] 1 Lloyd's Rep 569. Under a construction contract, the right to payment arises when a certificate is issued or ought to have been issued, and not when the work is done, although the doing of the work is a condition precedent to the right to a certificate: *Henry Boot Construction Ltd v Alstom Combined Cycles Ltd* [2005] EWCA Civ 814, [2005] 3 All ER 932, [2005] 1 WLR 3850, applied in *London and Regional (St George's Court) Ltd v Ministry of Defence* [2008] EWHC 526 (TCC), [2008] All ER (D) 249 (Mar); cf *Birse Construction Ltd v McCormick (UK) Ltd* [2004] EWHC 3053 (TCC), 99 ConLR 181, [2004] All ER (D) 371 (Dec) (affd [2005] EWCA Civ 940, [2005] BLR 523, [2005] All ER (D) 366 (Jul)) (cause of action accrued when the work was done).

As to the restrictions on civil liability in respect of a breach of any requirement under the Consumer Credit Act 1974 see s 170(1); and **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 301.

2 The determination of the date on which a breach of contract occurred is a question of fact, to be determined in the light of the surrounding circumstances: see *Transoceanic Petroleum Carriers v Cook Industries Inc, The Mary Lou* [1981] 2 Lloyd's Rep 272 (obligation in charterparty to nominate safe port for ship; port nominated was not safe, with resulting damage to ship: no presumption that breach occurred at time of nomination, since the port may have been safe at that time). In the case of a claim for an indemnity under the Land Registration Act 2002, however, the cause of action arises at the time when the claimant knows, or but for his own default might have known, of the existence of his claim: Sch 8 para 8(b).

3 *Forster v Outred and Co* [1982] 2 All ER 753, [1982] 1 WLR 86, CA; *Battley v Faulkner* (1820) 3 B & Ald 288; *Howell v Young* (1826) 5 B & C 259 at 265; *Lynn v Bamber* [1930] 2 KB 72 at 74. If no damage has resulted from the breach, the claimant is entitled to nominal damages: see **DAMAGES** vol 12(1) (Reissue) PARA 813.

4 *Battley v Faulkner* (1820) 3 B & Ald 288; *Howell v Young* (1826) 5 B & C 259.

5 See PARA 1168 et seq. An example of a statutory ground extending the time is where the right of action is concealed by fraud: see PARA 1224 et seq.

6 It may, on occasion, be possible for a contracting party who is the victim of a breach of contract which does not lead to manifest damage within the limitation period to establish the existence of a duty of care in the tort of negligence, thereby enabling him to avail himself of the later starting date for the running of time: see the Limitation Act 1980 ss 14A, 14B; and PARA 982. See further *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA; *Lancashire and Cheshire Association of Baptist Churches Inc v Howard & Seddon Partnership* [1993] 3 All ER 467; cf *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80, [1985] 2 All

ER 947, PC; *Greater Nottingham Co-operative Society Ltd v Cementation Piling and Foundations Ltd* [1989] QB 71, [1988] 2 All ER 971, CA; and *South Australian Asset Management Corp v York Montague Ltd* [1997] AC 191, [1996] 3 All ER 365, HL.

7 *Howell v Young* (1826) 5 B & C 259; *Brown v Howard* (1820) 2 Brod & Bing 73; *Smith v Fox* (1848) 6 Hare 386; *Wood v Jones* (1889) 61 LT 551; and see *Bean v Wade* (1885) 2 TLR 157, CA.

UPDATE

958 Accrual of the cause of action; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/959. Accrual of the cause of action; failure to perform contractual obligation.

959. Accrual of the cause of action; failure to perform contractual obligation.

Where a party, in breach of his contractual undertaking, fails to perform a contractual obligation, the claimant's cause of action will accrue on the date when the obligation should have been performed, notwithstanding that that failure was capable of rectification at a later date¹, unless the parties remain in a contractual relationship, in which case time will not start to run until the date when the relevant obligation becomes impossible to perform². Where the defendant's breach of contract can also be categorised as a breach of a duty of care owed to the claimant in the tort of negligence, time will run from the date of damage, and the claimant, by framing his claim in the tort of negligence, may be able to rely upon a later starting date or the alternative three-year limitation period which applies where the damage could not reasonably have been discovered within the primary six-year limitation period³.

If the contract is to do something at a particular time or upon the happening of a contingency, and the thing contracted for is not done, the cause of action arises at the time specified or upon the contingency happening⁴, and it seems that a request from the claimant that the defendant remedy the breach will not set a new six-year limitation period running⁵.

If the promise is to do anything upon request other than the payment of a present debt, time runs from the request⁶. In the case of a promise to pay a present debt on demand, it seems no demand is necessary, and the creditor's right of action arises contemporaneously with the creation of the debt⁷.

1 See *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA; *Forster v Outred & Co* [1982] 2 All ER 753, [1982] 1 WLR 86, CA; *Baker v Ollard & Bentley* (1982) 126 Sol Jo 593, CA; *DW Moore & Co Ltd v Ferrier* [1988] 1 All ER 400, [1988] 1 WLR 267, CA.

2 *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp* [1979] Ch 384, [1978] 3 All ER 571 (omission by solicitors to register option to purchase land as an estate contract; duty to register the option continued to bind the solicitors until the date at which it became impossible to perform and it was at that date that the contract was broken). See further *South Australian Asset Management Corp v York Montague Ltd* [1997] AC 191, [1996] 3 All ER 365, HL.

3 See the Limitation Act 1980 s 14A: see PARA 982. See also *Lancashire and Cheshire Association of Baptist Churches Inc v Howard & Seddon Partnership* [1993] 3 All ER 467; *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA; and PARA 980. As to negligence amounting to breach of contractual duty see PARA 984.

4 *Fenton v Emblers* (1762) 3 Burr 1278; *Waters v Earl of Thanet* (1842) 2 QB 757; cf *Hammond v Smith* (1864) 33 Beav 452. Where the promise is to pay a debt 'whenever the circumstances enable the debtor to do so, and the debtor may be called upon for that purpose', no demand is necessary, and the cause of action arises when the debtor is able to pay, although the creditor makes no demand and has no knowledge or notice of the debtor's ability to pay: *Waters v Earl of Thanet*.

5 *Bell v Peter Browne & Co* [1990] 2 QB 495 at 500-501, [1990] 3 All ER 124 at 126-127, CA, per Nicholls J.

6 *Webb v Martin* (1661) 1 Lev 48; *Shutford and Borough's Case* (1628) Godb 437; *Bill v Lake* (1629) Het 138.

7 *Collins v Benning* (1701) 12 Mod Rep 444. The fact that the debt is to be repaid with simple or even compound interest makes no difference (*Norton v Ellam* (1837) 2 M & W 461; *Jackson v Ogg* (1859) John 397), but as to a promise by a guarantor to pay on demand see PARA 968. See further **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1180-1188.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/960. Contracts of loan.

960. Contracts of loan.

In a claim for money lent, it is a matter of construction of the contract to determine the date from which time will run¹. If a time is stipulated for repayment, the limitation period will run from that time²; if the agreement provides that the occurrence or non-occurrence of a particular event is to trigger the obligation to repay, time will run from the date of that occurrence or non-occurrence³. Where the contract, either expressly or by implication, provides that a demand by the creditor is a necessary prerequisite to the right to repayment, time will not start to run until such a demand is made⁴.

Where a contract of loan does not provide for a fixed or determinable date for repayment and does not effectively (whether or not it purports to do so) make the obligation to repay the debt conditional on a demand for repayment made by or on behalf of the creditor or on any other matter⁵, time will run from the date on which a demand in writing for repayment of the debt is made by or on behalf of the creditor⁶. This will not apply, however, where in connection with taking the loan the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note as security for the debt) on terms which would exclude the application of this provision to the contract of loan if they applied directly to repayment of the debt⁷.

1 See generally *Lloyds Bank Ltd v Margolis* [1954] 1 All ER 734, [1954] 1 WLR 644.

2 *East India Co v Oditchburn Paul* (1850) 7 Moo PCC 85; *Reeves v Butcher* [1891] 2 QB 509, CA.

3 It is a question of construction of the contract as to whether the occurrence of the stipulated event triggers the obligation to repay, or merely entitles the lender to demand early repayment: see *Reeves v Butcher* [1891] 2 QB 509, CA, where the claimant lent money to the defendant for a two-year period, subject to a provision granting the right to reclaim the principal sum in the event that any instalment of interest became overdue by 21 days; the cause of action for return of the principal sum accrued on the expiry of the 21 days rather than at the end of the two-year period. Cf *Thakore (t/a Sunil Credit Finance) v Malik* (26 March 1982, unreported), CA, where the contract of loan provided that, in the event of default by the borrower in the payment of some instalment, the whole amount of principal was to become due and payable to the lender on demand; this required some overt demonstration of the lender's requirement that the borrower be held at once accountable for the whole residue of the loan; in this case, the term 'on demand' meant more than immediacy.

4 *Lakshmijit s/o Bhai Suchit v Faiz Mohammed Khan Sherani (as administrator for the estate of Shahbaz Khan)* [1974] AC 605, [1973] 3 All ER 737, PC (time did not run until a right of rescission of a contract for sale of land was exercised); and see PARA 1078 note 4.

5 Limitation Act 1980 s 6(2).

6 Limitation Act 1980 s 6(3).

7 See the Limitation Act 1980 s 6(2); and *Boot v Boot* (1996) 73 P & CR 137, (1996) Times, 9 May, CA; *Re Westminster Property Management Ltd, Boyden v Stern* [2002] EWHC 520 (Ch), [2002] All ER (D) 432 (Mar). 'Promissory note' has the same meaning as in the Bills of Exchange Act 1882 s 83: Limitation Act 1980 s 6(4); and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1405.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/961. Bank and building society accounts.

961. Bank and building society accounts.

Money advanced by a customer to a bank or building society is a loan, and is not held on trust¹. A demand is necessary to start time running against the customer, whether the money is held in either a deposit² or a current³ account. The customer cannot, by making fresh demands as often as he likes, create a fresh cause of action; but a demand for closure and repayment of the account may be retracted if the customer changes his mind and notifies the bank by making another demand for 'repayment at next maturity', so that if the bank continues holding the account, the contract will start afresh with time running from the date of the later demand⁴.

Where money is advanced by a bank to a customer in the form of an overdraft, no demand is required to start time running and the bank cannot recover a dormant overdraft more than six years following the last advance⁵. Where money is advanced by a bank or building society in any other form, the principles previously mentioned will apply⁶.

1 *Foley v Hill* (1848) 2 HL Cas 28.

2 *Atkinson v Bradford Third Equitable Building Society* (1890) 25 QBD 377, CA; *Arab Bank Ltd v Barclays Bank* [1954] AC 495, [1954] 2 All ER 226, HL; *Hart (Inspector of Taxes) v Sangster* [1957] Ch 329, [1957] 2 All ER 208, CA; *Mahomed v Bank of Baroda* [1999] 1 Lloyd's Rep Bank 14, [1998] All ER (D) 587, CA; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 865.

3 *Joachimson v Swiss Bank Corp* [1921] 3 KB 110, 90 LJBK 973, CA.

4 *Mahomed v Bank of Baroda* [1999] 1 Lloyd's Rep Bank 14, [1998] All ER (D) 587, CA.

5 *Parr's Banking Co v Yates* [1898] 2 QB 460, CA.

6 See PARAS 958, 978.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/962. Bills of exchange payable on demand.

962. Bills of exchange payable on demand.

If a bill or note is payable on demand, the statute of limitation runs from the date of making or accepting the instrument, and no demand is necessary¹. If, however, a note payable on demand is deposited with a bank for delivery to the payee on his producing another note cancelled, the statute only runs from the time the note is so delivered by the bank². Where the circumstances are such that the holder of an instrument payable on demand may, and does, exercise his option to treat the instrument as a promissory note³, and the instrument is not in the body of it made payable at a particular place, presentment for payment is not necessary to render the maker of the note liable, and the statute runs from the date of the instrument. If, however, the form of the instrument is such that presentment is necessary, the statute runs from its presentment⁴.

1 *Norton v Ellam* (1837) 2 M & W 461; *Allendale Ltd v Moualem* (6 July 2004, unreported), CA; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1604. A bill or note is payable on demand (1) when it is expressed to be payable on demand or at sight or on presentation; or (2) when no time for payment is expressed: Bills of Exchange Act 1882 ss 3(1), 83(1); and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1433.

2 *Savage v Aldren* (1817) 2 Stark 232.

3 Ie under the Bills of Exchange Act 1882 s 5(2). See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) para 1408.

4 *Re British Trade Corpn Ltd* [1932] 2 Ch 1, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/963. Bills of exchange payable at sight.

963. Bills of exchange payable at sight.

A bill payable at sight must, when presentment is necessary, be presented within a reasonable time¹ and the statute of limitation runs from its presentment²; but, as between the holder and the drawer, no time less than six years is unreasonable for presentment, unless some loss is caused to the drawer by the delay³. Where presentment is unnecessary⁴, the statute runs from the time when the holder first becomes aware of some fact that makes presentment unnecessary⁵.

1 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1516, 1518.

2 *Re Boyse, Crofton v Crofton, Canonge's Claim* (1886) 33 ChD 612; *Re British Trade Corpn Ltd* [1932] 2 Ch 1, CA.

3 *Laws v Rand* (1857) 3 CBNS 442; *Robinson v Hawksford* (1846) 9 QB 52.

4 See *Terry v Parker* (1837) 6 Ad & El 502; *Wirth v Austin* (1875) LR 10 CP 689; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1517.

5 See *Re Bethell, Bethell v Bethell* (1887) 34 ChD 561.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A.
SIMPLE CONTRACT/964. Bill of exchange accepted in blank.

964. Bill of exchange accepted in blank.

If a bill is accepted in blank and is not filled up for more than six years, the acceptor is none the less liable at the suit of a holder for value in good faith, and in such a case time does not run against a holder for value in good faith until the bill, as filled up, becomes due¹. But, if such a bill remains uncompleted in the payee's hands for more than six years, the payee cannot then fill it up and sue the acceptor on it².

1 *Montague v Perkins* (1853) 22 LJCP 187.

2 See *Re Bethell, Bethell v Bethell* (1887) 34 ChD 561.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/965. Bills of exchange payable at a fixed time.

965. Bills of exchange payable at a fixed time.

In the case of a bill or note payable at a fixed time after date, the statute of limitation runs only from the time at which the bill or note becomes due, even though the claim is for money lent for which the note is a security, because the money does not become payable until the time has expired¹. If a bill is payable at a specified period after sight or demand, the statute does not run until the expiration of that period². If a bill of exchange is dishonoured by non-acceptance, the statute begins to run against the payee immediately notice of dishonour is given³. The holder of a bill is not obliged to present it for acceptance, and may wait until the time for payment arrives and then present it for payment, in which case time does not run against the holder until the expiration of the period fixed for payment⁴.

1 *Wittersheim v Lady Carlisle* (1791) 1 Hy Bl 631; *Buckler v Moor* (1672) 1 Mod Rep 89.

2 *Thorpe v Booth* (1826) Ry & M 388; *Thorpe v Coomb* (1826) 8 Dow & Ry KB 347; and see *Moore v Petchell* (1856) 22 Beav 172.

3 *Whitehead v Walker* (1842) 9 M & W 506; *Wilkinson v Verity* (1871) LR 6 CP 206 at 209; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1604.

4 *Whitehead v Walker* (1842) 9 M & W 506 at 515.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/966. Cheques.

966. Cheques.

If a cheque is duly presented and dishonoured, a claim will lie against the drawer, but no such claim will lie without presentment unless there are special circumstances which render presentment unnecessary¹.

If a cheque is not presented within a reasonable time, no cause of action accrues against the drawer upon payment being refused, and the holder can sue only upon the original consideration for which the cheque was given or on the new promise to pay which arises on a cheque being given for an existing debt².

¹ See the Bills of Exchange Act 1882 ss 45-46, 73; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1405, 1515-1522.

² See *Re Bethell, Bethell v Bethell* (1887) 34 ChD 561; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1519, 1604.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/967. Contract to indemnify.

967. Contract to indemnify.

The accrual of the cause of action in the case of a claim on an express indemnity will depend on the construction of the contract. Where the indemnity is an indemnity against liability, with A being entitled to be indemnified by C in respect of his liability to B, the cause of action will come into existence when A incurs a liability to B¹. If, however, the indemnity is a general indemnity (an indemnity against the payment and discharge of liabilities), time will not begin to run against A for the purpose of pursuing his indemnity against C until both the fact and the extent of A's liability to B have been established, as the time when the claimant is called upon to pay the principal claim and thereby actually suffers the loss².

Where the claim is based on an implied indemnity, this will prima facie be a general indemnity, and time will start to run only once the fact and extent of liability have been determined³.

Special provisions apply in relation to causes of action for indemnity under the Land Registration Act 2002⁴.

¹ See *Bosma v Larsen* [1966] 1 Lloyd's Rep 22; *Telfair Shipping Corpn v Inersea Carriers SA, The Caroline P* [1985] 1 All ER 243, [1985] 1 WLR 553.

² See *Collinge v Heywood* (1839) 9 Ad & El 633; *R & H Green & Silley Weir Ltd v British Railways Board* [1985] 1 All ER 237, [1985] 1 WLR 570n; *County and District Properties Ltd v C Jenner & Son Ltd* [1976] 2 Lloyd's Rep 728; *Telfair Shipping Corpn v Inersea Carriers SA, The Caroline P* [1985] 1 All ER 243, [1985] 1 WLR 553; and *National House-Building Council v Fraser* [1983] 1 All ER 1090, 22 BLR 43.

³ See *Telfair Shipping Corpn v Inersea Carriers SA, The Caroline P* [1985] 1 All ER 243, [1985] 1 WLR 553.

⁴ See the Land Registration Act 2002 Sch 8 para 8; PARA 1017; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 983.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/968. Guarantor and creditor.

968. Guarantor and creditor.

As between a guarantor and a creditor, the statute of limitation runs in favour of the guarantor when he becomes liable to make a payment to the creditor¹.

In the case of a guarantee of the payment of a mortgage debt, time runs in favour of the guarantor, not from the date of the loan, but from the expiration of a reasonable time after that date, during which time the mortgagee must be treated as having agreed not to sue². It is uncertain whether as a general rule in the case of a continuing guarantee for a continuing account a cause of action arises when an advance is made or only when a balance is struck and a demand made³. When what is guaranteed is the repayment of every debit balance as it is constituted from time to time, during the continuance of the guarantee, by the excess of the total debits over the total credits, the question of limitation can arise in regard only to the time which has elapsed since the balance guaranteed and sued for has been constituted, and the number of years which has expired since any individual debit was incurred is immaterial⁴. If the guarantee is to pay on demand, time runs only from a demand⁵, while if the guarantee is for the safety of the money advanced, time runs only from the date when the security is shown to be unsafe⁶.

If a guarantor pays the debt or part of it, the statute runs against his right to recover from the principal from the time when the payment was made⁷.

1 *Colvin v Buckle* (1841) 8 M & W 680; *Holl v Hadley* (1835) 2 Ad & El 758.

2 *Henton v Paddison* (1893) 68 LT 405.

3 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 997, 1181. Where the right to the principal sum is barred the general rule is that the right to the interest is also barred (see PARA 1206); however, for the circumstances in which interest may be recoverable from a guarantor although the right to the principal sum is barred see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1099.

4 *Wright v New Zealand Farmers Co-operative Association of Canterbury Ltd* [1939] AC 439, [1939] 2 All ER 701, PC; see also **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1181.

5 *Re Brown's Estate, Brown v Brown* [1893] 2 Ch 300; *Bradford Old Bank Ltd v Sutcliffe* [1918] 2 KB 833, CA; and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1181.

6 *Sheers v Thimbleby & Son* (1897) 76 LT 709 at 711, CA. Cf cases of guarantee of mortgage debt by specialty: see PARA 977.

7 *Davies v Humphreys* (1840) 6 M & W 153; *Considine v Considine* (1846) 9 ILR 400. If a guarantor pays a statute-barred debt, he cannot recover the money from the principal: *Re Morris, Coneys v Morris* [1922] 1 IR 81 (affd [1922] 1 IR 136, CA).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/969. Co-guarantors etc.

969. Co-guarantors etc.

As between co-guarantors, co-contractors, or co-debtors, the statute of limitation runs against the right of contribution of one who has paid more than his share from the time of such payment¹. It is immaterial that at the time of claim for contribution the statute may have run between the principal creditor and the co-guarantor who is sued for contribution². A co-guarantor who has been called upon by the creditor to pay the whole of the debt may, although he has paid nothing, bring a claim against his co-guarantor who has not been called upon to pay to compel him to contribute towards the common liability and the statute does not run against his right to bring such a claim until the creditor's claim has been established against the guarantor³.

1 *Davies v Humphreys* (1840) 6 M & W 153; *Re Snowdon, ex p Snowdon* (1881) 17 ChD 44, CA; *Gardner v Brooke* [1897] 2 IR 6, CA. As to the right of contribution see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 1170-1172, 1189-1190.

2 *Wolmershausen v Gullick* [1893] 2 Ch 514; *Gardner v Brooke* [1897] 2 IR 6, CA.

3 *Wolmershausen v Gullick* [1893] 2 Ch 514; *Robinson v Harkin* [1896] 2 Ch 415 (co-trustee's liability for breach of trust); and see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1168.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/970. Claims to recover money.

970. Claims to recover money.

In a claim for money had and received to recover the consideration for the purchase of a void annuity, the statute of limitation runs from the time when the annuity is set aside¹.

In a claim for money paid by mistake common to both parties, the cause of action in mistake runs from the time when the claimant discovered the mistake or could with reasonable diligence have discovered it².

In a claim for money paid for the use of another, where from the mere payment the law implies a promise to repay on demand³, time runs from the date of payment, but where no such promise is implied by law, the statute does not run until the payment is adopted by the person on whose behalf it is made⁴.

1 *Cowper v Godmond* (1833) 9 Bing 748; *Huggins v Coates* (1843) 5 QB 432. As to claims for money had and received see **RESTITUTION** vol 40(1) (2007 Reissue) PARAS 5, 78, 79.

2 Limitation Act 1980 s 32(1)(c); and see PARA 1220 et seq. As to mistake generally see **MISTAKE**.

3 See **RESTITUTION** vol 40(1) (2007 Reissue) PARA 76.

4 Thus if a sub-tenant voluntarily pays rent due from the mesne landlord to the head landlord, the statute does not run until the mesne landlord adopts the payment: *Ahearne v M'Swiney* (1874) IR 8 CL 568. If such a payment is made by compulsion, the statute runs from the payment: see *Grogan v Regan* [1902] 2 IR 196, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/971. Goods sold on credit.

971. Goods sold on credit.

If goods are sold on credit, the statute of limitation runs not from the sale or delivery of the goods, but from the time when the term of credit expires¹. However, a breach of any requirement under the Consumer Credit Act 1974 incurs no civil sanction except as provided under that Act².

1 *Helps v Winterbottom* (1831) 2 B & Ad 431; and see generally **SALE OF GOODS AND SUPPLY OF SERVICES**.

2 See the Consumer Credit Act 1974 s 170(1); and see generally **CONSUMER CREDIT**.

UPDATE

971 Goods sold on credit

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/972. Work done.

972. Work done.

In general the cause of action for defective work will arise at the time when the works as a whole are or ought to have been completed, or, in the case where defective work ought to have been corrected, at a date when the work ought to have been done¹, for example at the time when the instructions ought to have been complied with or the work attended to as maintenance work. In the case of a failure to complete on time the cause of action will arise at the date when the works ought to have been completed. In the case of a claim for payment, the cause of action will arise when the price, instalment, or sum certified ought to have been paid. Normally the latest date will be the relevant date. A contract to do work may, however, contain a condition that the price should be paid out of a certain fund or when a certain contingency has happened, and in such a case the cause of action does not arise until the fund comes into existence or until the contingency has happened². Under a construction contract, the right to payment arises when a certificate is issued or ought to have been issued, and not when the work is done, although the doing of the work is a condition precedent to the right to a certificate³.

¹ See *Bellway (South East) Ltd v Holley* (1984) 28 BLR 139; *Chelmsford District Council v Evers* (1984) 25 BLR 99. See further *Emery v Day* (1834) 1 Cr M & R 245 at 248 per Parke B; and *Hyde v Partridge* (1705) 2 Ld Raym 1204. In the case of an entire contract (such as a building contract) where different parts of the work may be completed at different times, it would appear that time will begin to run in respect of any defects from the date when all the contractual obligations are completed, rather than from the date when the particular defective portion of the contract was completed: see **BAILMENT** vol 3(1) (2005 Reissue) PARA 65; **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 184; and **CONTRACT** vol 9(1) (Reissue) PARAS 922, 942.

² *Re Kensington Station Act* (1875) LR 20 Eq 197; *Re Gloucester, Aberystwyth and Central Wales Rly Co* (1860) 2 Giff 47; *Nichols v North Metropolitan Rly and Canal Co* (1894) 71 LT 836, CA (solicitor's costs).

³ *Henry Boot Construction Ltd v Alstom Combined Cycles Ltd* [2005] EWCA Civ 814, [2005] 3 All ER 932, [2005] 1 WLR 3850, applied in *London and Regional (St George's Court) Ltd v Ministry of Defence* [2008] EWHC 526 (TCC), [2008] All ER (D) 249 (Mar); cf *Birse Construction Ltd v McCormick (UK) Ltd* [2004] EWHC 3053 (TCC), 99 ConLR 181, [2004] All ER (D) 371 (Dec), affd [2005] EWCA Civ 940, [2005] All ER (D) 366 (Jul) (cause of action accrued when the work was done).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/973. Solicitors' costs.

973. Solicitors' costs.

In relation to continuous work by a solicitor, such as the bringing and prosecuting or defending of a claim:

- 53 (1) if a solicitor sues for his costs in a claim, the statute of limitation only begins to run from the date of the termination of the claim or of the lawful ending of the retainer of the solicitor¹;
- 54 (2) if there is an appeal from the judgment in the claim, time does not begin to run against the solicitor, if he continues to act as such, until the appeal is decided²;
- 55 (3) if judgment has been given and there is no appeal, time runs from the judgment, and subsequent items of costs incidental to the business of the claim will not take the earlier items out of the statute³.

In respect of miscellaneous work done by a solicitor, time under statutory limitation begins to run from the completion of the whole of each piece of work⁴.

A solicitor cannot normally sue a client for costs until the expiration of one month after delivery of a signed bill⁵, but nevertheless time runs against a solicitor from the completion of the work and not from the delivery of the bill⁶. If some only of the items included in the bill are statute-barred, the solicitor may recover in respect of the balance⁷.

1 *Harris v Osbourn* (1834) 2 Cr & M 629; *Martindale v Falkner* (1846) 2 CB 706; *Whitehead v Lord* (1852) 7 Exch 691; *Nicholls v Wilson* (1843) 11 M & W 106. As to lawful ending of the retainer see also *Underwood, Son and Piper v Lewis* [1894] 2 QB 306, CA; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 780.

2 *Harris v Quine* (1869) LR 4 QB 653.

3 *Rothery v Munnings* (1830) 1 B & Ad 15; cf *Re Hall and Barker* (1878) 9 ChD 538; *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA; and see *Re Cartwright* (1873) LR 16 Eq 469; *Re Romer and Haslam* [1893] 2 QB 286, CA; *Baile v Baile* (1872) LR 13 Eq 497.

4 *Beck v Pierce* (1889) 23 QBD 316 at 323, CA; *Phillips v Broadley* (1846) 9 QB 744. As to a claim against a solicitor for negligence see PARA 984.

5 Solicitors Act 1974 s 69(1).

6 *Coburn v Colledge* [1897] 1 QB 702, CA; and see *O'Connor v Isaacs* [1956] 2 QB 288, [1956] 2 All ER 417, CA; and *Cheese v Keen* [1908] 1 Ch 245. As to the effect of a lien see PARA 942; and **LIEN** vol 68 (2008) PARAS 820, 855, 885.

7 *Blake v Hummell* (1884) 51 LT 430 following *Haigh v Ousey* (1857) 7 E & B 578; and see *Re Pomeroy and Tanner* [1897] 1 Ch 284; *Pilgrim v Hirschfeld* (1863) 12 WR 51. Cf the form of order settled in *Re Brockman* [1909] 2 Ch 170, CA. The solicitor cannot, after judgment against him on the statute-barred items, set off against them a sum received on behalf of the client, or appropriate such a sum to such items: *Smith v Betty* [1903] 2 KB 317, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/A. SIMPLE CONTRACT/974. Time limit for claims to enforce certain awards.

974. Time limit for claims to enforce certain awards.

A claim to enforce an award¹ may not be brought after the expiration of six years from the date on which the cause of action accrued².

¹ ie an award on an arbitration agreement or on an arbitration under an enactment. As to the limitation period in respect of proceedings by way of arbitration generally see the Arbitration Act 1996 ss 12-14; and PARA 917.

² Limitation Act 1980 s 7. Time runs from the date the implied promise to perform the award is broken, not from the date of accrual of the original cause of action giving rise to the submission: see *Agromet Motoimport v Maulden Engineering Co (Beds) Ltd* [1985] 2 All ER 436, [1985] 1 WLR 762.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/B. SPECIALTIES/975. Period of limitation.

B. SPECIALTIES

975. Period of limitation.

A claim¹ upon a specialty², including a claim relating to a speciality brought in reliance on the rights conferred on a third party to a contract³ by the Contracts (Rights of Third Parties) Act 1999⁴, may not be brought after the expiration of 12 years from the date on which the cause of action accrued⁵. This 12-year period is, however, subject to any other provision of the 1980 Act and thus, if a shorter period of limitation is prescribed for any claim by any such provision, it is the shorter limitation period which will apply rather than the 12-year period⁶.

1 As to the meaning of 'claim' see PARA 915.

2 For examples of specialties see PARA 976.

3 Ie a claim brought in reliance on the Contracts (Rights of Third Parties) Act 1999 s 1: see **CONTRACT**.

4 See the Contracts (Rights of Third Parties) Act 1999 s 7(3).

5 Limitation Act 1980 s 8(1).

6 Limitation Act 1980 s 8(2). Although a statute is a form of specialty, s 9 imposes a six-year limitation period in respect of claims to recover a sum of money due under a statute and consequently the six-year limitation period will prevail: see *Central Electricity Board v Halifax Corpn* [1963] AC 785, [1962] 3 All ER 915, HL; and PARA 952. The period for the recovery of arrears of rent or damages in respect of arrears of rent is six years, notwithstanding that the lease or guarantee may be under seal: see *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA; and PARA 1021. As to claims to enforce judgments see PARAS 953, 1010 et seq.

UPDATE

975 Period of limitation

NOTE 5--See *Nolan v Wright* [2009] EWHC 305 (Ch), [2009] 3 All ER 823.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/B. SPECIALTIES/976. Examples of specialties.

976. Examples of specialties.

'Specialty' includes a bond, a deed, a covenant and a statute¹. This includes a foreign contract under seal². 'Specialty' is also often used in the sense of meaning a specialty debt, that is an obligation under a deed securing a debt or a debt due from the Crown or under statute³. Contracts of service, just as much as payment of a debt, are capable of being 'specialties' within the meaning of the Limitation Act 1980 and a claim on a specialty is not limited to a claim for specific performance of the obligation created by the specialty but includes a claim for damages for breach⁴. The term 'specialty' may also apply to statutes with the effect that, where the claimant's cause of action is derived from statute alone, the applicable limitation period is that of a specialty, provided that the claimant is seeking to assert a non-pecuniary right⁵.

Under the Companies Act 1985, the memorandum and articles of association of a company⁶, when registered, bind the company and its members as if they had been signed and sealed by the members⁷, with the result that a claim by the company to recover money payable to it under the memorandum or articles is time-barred after 12 years⁸. However, a claim brought against the company by a member is not a claim to enforce a specialty, and the limitation period is therefore six years⁹. Under the Companies Act 2006, however, although the provisions of a company's constitution bind the company and its members to the same extent as if there were covenants on the part of the company and of each member to observe those provisions¹⁰, money payable by a member to the company under its constitution is of the nature of an ordinary contract debt due from him to the company¹¹; such a debt will become time-barred after six years¹².

If one co-debtor under a bond pays the whole of the debt, the liability of his co-debtor to pay his share of the debt is, it seems, in effect a specialty¹³.

1 See *Royal Trust Co v A-G for Alberta* [1930] AC 144, PC; *Collin v Duke of Westminster* [1985] QB 581, [1985] 1 All ER 463, CA; *Aiken v Stewart Wrightson Members' Agency Ltd* [1995] 3 All ER 449, [1995] 1 WLR 1281. A seal is no longer necessary for the valid execution of a deed by an individual: Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b).

2 *Alliance Bank of Simla v Carey* (1880) 5 CPD 429.

3 See *Cork and Bandon Rly Co v Goode* (1853) 13 CB 826 at 835 per Maule J; and *R v Williams* [1942] AC 541 at 555, [1942] 2 All ER 95 at 101, PC.

4 *Aiken v Stewart Wrightson Members' Agency Ltd* [1995] 3 All ER 449, [1995] 1 WLR 1281.

5 See *Collin v Duke of Westminster* [1985] QB 581, [1985] 1 All ER 463, CA. See also *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144; *Re Yates (a bankrupt)* [2004] EWHC 3448 (Ch), [2004] All ER (D) 373 (Nov), [2005] BPIR 476; *Re Nurkowski (a bankrupt)*, *Hill v Spread Trustee Co Ltd* [2005] BPIR 842 (affd sub nom *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542, [2007] 1 All ER 1106, [2007] 1 WLR 2404) (applications to set aside transactions under the Insolvency Act 1986 s 423 are normally claims on a specialty (the statute) subject to a 12-year limitation period). Although a statute is a form of specialty, the Limitation Act 1980 s 9 imposes a six-year limitation period in respect of claims to recover a sum of money due under a statute and consequently, by virtue of s 8(1) which states that the 12-year period in relation to specialties does not affect any claim for which a shorter period of limitation is prescribed by the Act, the shorter six-year limitation period will prevail: see *Central Electricity Board v Halifax Corp* [1963] AC 785, [1962] 3 All ER 915, HL; *Re Priory Garage (Walthamstow) Ltd*; *Re Yates (a bankrupt)*.

6 As to the meaning of 'company' see the Companies Act 1985 s 735 (prospectively repealed); and **COMPANIES** vol 14 (2009) PARAS 1, 24.

7 Companies Act 1985 s 14(1) (prospectively repealed).

8 See the Companies Act 1985 s 14(2) (prospectively repealed).

9 *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668 (a claim to enforce rights to unclaimed dividends on shares and rights to unclaimed capital to be returned to members on past reductions of capital are not 'claims on a specialty').

10 See the Companies Act 2006 s 33(1) (not yet in force).

11 Companies Act 2006 s 33(2) (not yet in force).

12 See the Limitation Act 1980 s 5; and PARA 956.

13 See the Mercantile Law Amendment Act 1856 s 5; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1159.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/B. SPECIALTIES/977. When time begins to run.

977. When time begins to run.

In the case of a covenant or bond, the limitation period runs not from the date of the instrument, but from the breach of the covenant or of the condition of the bond¹.

If a guarantor covenants jointly with a mortgagor and also separately to pay the mortgage debt with interest on demand, in the case of the principal debtor no demand is necessary and the time begins to run in his favour at once, but generally in the case of the guarantor time does not run in his favour until demand has been made². If the breach is a continuing one, a fresh cause of action arises at every moment during which the breach continues³, so for example where a tenant covenants to keep the demised premises in repair and neglects to do so, time does not run so long as they continue out of repair during the tenancy, even though they are entirely destroyed⁴. Where, however, on the sale of property, the vendor covenants that he has a good title to transfer, while in fact he has not a good title, the breach of the covenant is at the time of the sale, and there is no continuing breach; but if the vendor covenants for quiet enjoyment, there is no breach of that covenant until there is an interference with the enjoyment of the purchaser or those claiming through him⁵. Similarly, if a party to a contract fails to perform his contractual obligations, time will normally run from the date when the relevant obligation should have been performed, even though the default was capable of rectification at a later date: there is no continuing breach⁶.

If the transferors of shares in a company are, under the company's articles of association, released from all liabilities in respect of the shares after the transfer, time begins to run, in respect of those liabilities, from the date of the transfer⁷.

1 See *Tuckey v Hawkins* (1847) 4 CB 655; *Barker v Shore* (1839) 1 Jebb & S 610; *Gilman v Chute* (1847) 11 ILR 442; *Kennedy v Whaley* (1848) 12 ILR 54; and **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARAS 133-135.

2 See *Re Brown's Estate, Brown v Brown* [1893] 2 Ch 300; *Bradford Old Bank Ltd v Sutcliffe* [1918] 2 KB 833, CA; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1105.

3 *Maddock v Mallet* (1860) 12 ICLR 173 at 193, Ex Ch; *Spoor v Green* (1874) LR 9 Exch 99. As to accrual of the cause of action on successive breaches of a bond or covenant to secure eg an annuity not charged on land see *Manning v Phelps* (1854) 10 Exch 59; and **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARAS 133-135. As to annuities charged on land see PARA 1107.

4 *Maddock v Mallet* (1860) 12 ICLR 173; *Morrogh v Alleyne* (1873) 7 IR Eq 487.

5 *Spoor v Green* (1874) LR 9 Exch 99; *Turner v Moon* [1901] 2 Ch 825 at 828; and see **SALE OF LAND**.

6 See *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA; *Forster v Outred & Co* [1982] 2 All ER 753, [1982] 1 WLR 86, CA; and PARAS 958-959.

7 *Re Portsmouth Banking Co, Helby's, Stokes' and Horsey's Cases* (1866) LR 2 Eq 167; and see PARA 976.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ii) Contract/B. SPECIALTIES/978. Claims to recover money secured by mortgage or proceeds of sale of land.

978. Claims to recover money secured by mortgage or proceeds of sale of land.

Special provision is made for the limitation of claims¹ to recover money secured by a mortgage or charge² or to recover proceeds of the sale of land³. The period of limitation laid down by these provisions is in general the same, namely 12 years⁴, as the period applicable to claims on specialties⁵. Time runs from the date on which the right to receive the money accrued⁶.

1 As to the meaning of 'claim' see PARA 915.

2 An order under the Insolvency Act 1986 s 313 (charge on a bankrupt's home) creates a proprietary right which is a charge for these purposes: *Gotham v Doodes* [2006] EWCA Civ 1080, [2007] 1 All ER 527, [2007] 1 WLR 86.

3 See the Limitation Act 1980 s 20; and PARAS 1105, 1110.

4 See the Limitation Act 1980 s 20(1); and PARA 1105.

5 See the Limitation Act 1980 s 8; and PARA 975.

6 Limitation Act 1980 s 20(1). As to the possible difference in meaning between 'date on which the cause of action accrued' (s 8 (specialties)) and 'date when the right to receive the money accrued' (s 20(1)) see PARA 1112 note 2.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/A. IN GENERAL/979. The general limitation period.

(iii) Tort

A. IN GENERAL

979. The general limitation period.

A general limitation period of six years from the date on which the cause of action accrued applies to claims founded on tort¹. Accordingly, if a claim is not brought within six years of accrual it will be time-barred. There are a number of specific exceptions to this rule, dealt with individually within the Limitation Act 1980 and later in this title².

¹ Limitation Act 1980 s 2. A government breach of European Community law is a breach of statutory duty and may give rise to a claim founded on tort within the meaning of s 2: *R v Secretary of State for Transport, ex p Factortame (No 7)* [2001] 1 WLR 942, [2000] All ER (D) 2082; and see *Phonographic Performance Ltd v Department of Trade and Industry* [2004] EWHC 1795 (Ch), [2005] 1 All ER 369, [2004] 1 WLR 2893; *Moore v Secretary of State for Transport* [2007] EWHC 879 (QB), [2007] All ER (D) 152 (Apr) (affd sub nom *Spencer v Secretary of Work and Pensions, Moore v Secretary of State for Transport* [2008] EWCA Civ 750, [2008] All ER (D) 20 (Jul)); *Byrne v Motor Insurers Bureau* [2008] EWCA Civ 574, [2008] All ER (D) 307 (May).

² See eg cases of defamation (see the Limitation Act 1980 s 4A; and PARA 996 et seq) and of latent damage (see s 14A; and PARA 982).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/B. NEGLIGENCE/980. Negligence generally.

B. NEGLIGENCE

980. Negligence generally.

In a claim in negligence the limitation period is generally six years from accrual of the cause of action¹. The necessary constituents of a claim in negligence are (1) a duty of care; (2) a breach of the duty of care; and (3) recoverable damage². Damage being an essential ingredient of the tort, the cause of action accrues and time begins to run from the date when the claimant first sustains damage as a result of the negligence, rather than the date on which the negligent act was committed or the date on which any damage was discoverable³.

The damage giving rise to accrual of the claim must be damage in respect of which a claim may be maintained against the defendant. Where the damage sustained is pure economic loss, there are three tests which may be used to establish whether the defendant owed the claimant a duty of care in tort. The first test is whether the defendant had assumed responsibility for what he said⁴ and did vis-à-vis the claimant or was to be treated by the law as having done so; an assumption of responsibility, objectively tested, is a sufficient condition of liability⁵. Where this cannot be established, a threefold policy test as to whether the loss was reasonably foreseeable, whether there was sufficient proximity⁶ between the parties and whether, in all the circumstances, it was just, fair and reasonable to impose a duty of care may be applicable⁷; but this test does not provide a straightforward answer to the question whether or not, in a novel situation, a party owes a duty of care⁸. Finally, there is an incremental test, whereby the law may develop novel categories of negligence incrementally by analogy with established categories⁹; this test has been described as of little value as a test in itself, and only helpful when used in combination with a test or principle which identifies the legally significant features of a situation¹⁰. Irrespective of the test applied, attention must be concentrated on the detailed circumstances of the particular case and the particular relationship between the parties in the context of their legal and factual situation as a whole¹¹.

It has been held that where, as a result of the defendant's negligent act, the claimant has sustained non-actionable economic loss more than six years prior to commencement of proceedings, and subsequently sustains actionable physical loss within the six-year limitation period, his claim will not be time-barred, although damages may be reduced by reason of contributory negligence if he has ignored a clear manifestation of a defect¹².

1 See the Limitation Act 1980 s 2.

2 *M'Alister (or Donoghue) v Stevenson* [1932] AC 562, HL; and see generally **NEGLIGENCE**.

3 *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1, [1983] 1 All ER 65, HL (overruling *Sparham-Souter v Town and Country Developments (Essex) Ltd* [1976] QB 858, [1976] 2 All ER 65, CA); applied in *Abbott v Will Gannon & Smith Ltd* [2005] EWCA Civ 198, 103 ConLR 92, [2005] BLR 195; and see eg *Byrne v Hall Pain & Foster (a firm)* [1999] 2 All ER 400, [1999] 1 WLR 1849, CA (claimants exchanged contracts to purchase the lease of a flat, relying on a surveyor's report which they later claimed had been negligently prepared; held that they sustained damage when they exchanged contracts, since on exchange they became irrevocably committed to acquiring the lease, and not on completion of the purchase; the claim was time-barred under the Limitation Act 1980 s 2); *Khan v RM Falvey & Co* [2002] EWCA Civ 400, [2002] Lloyd's Rep PN 369, [2002] All ER (D) 361 (Mar) (cause of action against negligent solicitor accrued when the proceedings in which he was instructed might have been struck out under CPR 3.4(2)(c) (see PARA 950) rather than from actual date of strike out). For an example of the application of this limitation period in an unusual context see *F v Wirral Metropolitan Borough Council* [1991] Fam 69, [1991] 2 All ER 648, CA (time ran from date alleged negligent

decision to keep children in care was taken). A cause of action in tort arises when the claimant first sustains damage, ie any detriment, liability or loss, including liabilities which might arise on a contingency and losses incurred eg from onerous provisions or covenants in leases: *Byrne v Hall Pain & Foster (a firm)*.

4 As to negligent misstatement see PARA 981.

5 See *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28 at [4]-[5], [2007] 1 AC 181 at [4]-[5], [2006] 4 All ER 256 per Lord Bingham of Cornhill, where the authorities are reviewed. Even where the parties are in a relationship of employer and employee, or in a situation akin to employment or equivalent to another kind of contract, there is nothing to prevent the voluntary assumption of responsibility principle applying to an omission to give advice in circumstances where, if not handled carefully, the matter for which the defendant has voluntarily assumed responsibility may result in the claimant suffering economic loss: *Lennon v Metropolitan Police Comr* [2004] EWCA Civ 130, [2004] 2 All ER 266, [2004] 1 WLR 2594.

6 As to the test of proximity see *Murphy v Brentwood District Council* [1991] 1 AC 398 at 481, [1990] 2 All ER 908 at 930, HL, per Lord Bridge of Harwich; *Islington London Borough Council v University College London Hospital NHS Trust* [2005] EWCA Civ 596, [2006] LGR 50, 85 BMLR 171. See also *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL; *Caparo Industries plc v Dickman* [1990] 2 AC 605, [1990] 1 All ER 568, HL; *Smith v Eric S Bush* [1990] 1 AC 831, [1989] 2 All ER 514, HL; *McNaughton (James) Papers Group Ltd v Hicks Anderson & Co* [1991] 2 QB 113, [1991] 1 All ER 134, CA; *Al Saudi Banque v Clarke Pixley* [1990] Ch 313, [1989] 3 All ER 361.

7 See note 5; and see *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145, [1994] 3 All ER 506, HL; *Spring v Guardian Assurance plc* [1995] 2 AC 296, [1994] 3 All ER 129, HL; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL; and **NEGLIGENCE** vol 78 (2010) PARAS 4, 13.

8 *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28 at [6], [2007] 1 AC 181 at [6], [2006] 4 All ER 256 per Lord Bingham of Cornhill, where the authorities are reviewed.

9 See *Caparo Industries plc v Dickman* [1990] 2 AC 605 at 618, [1990] 1 All ER 568 at 574, HL, per Lord Bridge of Harwich, approving dictum of Brennan J in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at 43-44, Aust HC; and see *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28 at [4], [2007] 1 AC 181 at [4], [2006] 4 All ER 256 per Lord Bingham of Cornhill.

10 See Mitchell and Mitchell 'Negligence Liability for Pure Economic Loss' (2005) 121 LQR 194 at 199, approved in *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28 at [7], [2007] 1 AC 181 at [7], [2006] 4 All ER 256 per Lord Bingham of Cornhill.

11 See *Customs and Excise Comrs v Barclays Bank plc* [2006] UKHL 28 at [8], [2007] 1 AC 181 at [8], [2006] 4 All ER 256 per Lord Bingham of Cornhill.

12 *Nitrigin Eireann Teoranta v Inco Alloys Ltd* [1992] 1 All ER 854, [1992] 1 WLR 498. See further **NEGLIGENCE** vol 78 (2010) PARAS 15, 48, 73, 75 et seq.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/B. NEGLIGENCE/981. Negligent misstatement.

981. Negligent misstatement.

Where in breach of a duty to prevent economic loss¹, the defendant has negligently given defective advice to the claimant, who has relied on the advice to his detriment², the cause of action will accrue on the date when the claimant sustains damage as a result of reliance on the advice³. It will be a question of fact to determine whether damage was sustained at the time of reliance or some later date⁴.

1 As to the tests for establishing whether such a duty exists see PARA 980.

2 I.e. where there is a negligent misstatement: see *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL.

3 This will normally be the date of execution of the defective document or the date of reliance on the defective advice: see *Forster v Outred & Co* [1982] 2 All ER 753, [1982] 1 WLR 86, CA; *DW Moore & Co Ltd v Ferrier* [1988] 1 All ER 400, [1988] 1 WLR 267, CA; and *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA. See also *Gordon v JB Wheatley & Co (a firm)* (2000) Times, 6 June, [2000] All ER (D) 726, CA (where the claimant suffered loss as a result of the failure of a solicitor to advise him that he had set up a private mortgage scheme in the form of a collective investment scheme which might be investigated by the Securities and Investments Board (now replaced by the Financial Services Authority), the loss occurred every time an investor made an investment into the pooled scheme). The burden of proof is on the claimants to show that the date when they first knew enough for it to be reasonable for them to investigate the possibility that the advice they received was defective was within the limitation period: *Haward v Fawcetts (a firm)* [2006] UKHL 9, [2006] 3 All ER 497, [2006] 1 WLR 682; applied in *Harris Springs Ltd v Howes* [2007] EWHC 3271 (TCC), [2008] BLR 229, [2008] All ER (D) 60 (Feb).

4 See *UBAF Ltd v European American Banking Corpn* [1984] QB 713, [1984] 2 All ER 226, CA; *First National Commercial Bank plc v Humberts* [1995] 2 All ER 673, CA; and *Tabarrok v EDC Lord & Co* [1997] PNLR 491, (1997) Times, 14 February, CA.

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982. Latent damage.

In a claim for negligence seeking damages, other than for personal injuries, where the facts relevant to a cause of action are not known at the date of accrual of the cause of action, the normal six-year limitation period may not apply¹. The limitation period applicable in such cases is either:

- 56 (1) six years from the date on which the cause of action accrued; or
- 57 (2) three years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had both the knowledge required for bringing a claim for damages in respect of the relevant damage and a right to bring such a claim, if that period expires later than the period mentioned in head (1) above².

The 'knowledge'³ necessary to start time running against a claimant is knowledge of the following:

- 58 (a) the material facts about the damage in respect of which damages are claimed⁴, namely such facts about the damage as would lead a reasonable person⁵ who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings against a defendant who did not dispute liability and was able to satisfy a judgment⁶;
- 59 (b) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence⁷;
- 60 (c) the identity of the defendant⁸; and
- 61 (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of a claim against the defendant⁹.

Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of these provisions¹⁰. A person's knowledge includes knowledge which he might reasonably have been expected to acquire either from facts observable or ascertainable by him or from facts ascertainable by him with the help of appropriate advice which it is reasonable for him to seek; however, a person is not to be taken to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice¹¹. Once the claimant knows the relevant facts, the running of time cannot be suspended or commenced afresh by the discovery of further facts which may strengthen his case¹².

Notwithstanding the above provisions, an overall 'longstop' is placed on limitation in relation to these claims: a claim for damages for negligence (other than a claim for damages for personal injury) may not be brought after the expiration of 15 years from the date (or, if more than one, the last of the dates) on which there occurred any act or omission which is alleged to constitute negligence and to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part)¹³. This overriding time limit of 15 years will bar the right of action in appropriate cases notwithstanding that the cause of action has not yet accrued, or that the claimant does not yet possess the knowledge necessary to institute proceedings¹⁴. It

seems, however, that while the claimant's remedy is barred his underlying right is not extinguished¹⁵.

The above provisions have no application to claims to recover money due under an enactment¹⁶, even where the sum is due in respect of conduct or advice which may be considered negligent¹⁷. Neither do they apply to statutory, as opposed to negligent, misrepresentations¹⁸.

1 Limitation Act 1980 s 14A(1), (2) (ss 14A, 14B added by the Latent Damage Act 1986 s 1). The special time limit given in such cases is confined to claims for damages for negligence where the duty of care the breach of which constitutes the negligence relied on arises solely in tort, and does not apply to claims framed in contract: *Société Commerciale de Réassurance v ERAS (International) Ltd, Re ERAS EIL appeals* [1992] 2 All ER 82n, [1992] 1 Lloyd's Rep 570, CA; *Iron Trade Mutual Insurance Co Ltd v JK Buckenham Ltd* [1990] 1 All ER 808, [1989] 2 Lloyd's Rep 85; *Islander Trucking Ltd v Hogg Robinson & Gardner Mountain (Marine) Ltd* [1990] 1 All ER 826.

The date of accrual of a cause of action in cases of latent damage arising through negligence remains unchanged: see *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1, [1983] 1 All ER 65, HL; and *PARA 921*. See also *Hamlin v Edwin Evans* [1996] 2 EGLR 106, 47 EG 141, CA (only one single and indivisible cause of action arises on the making of a negligent survey and, for the purposes of the Limitation Act 1980 s 14A, the cause of action accrues when damage is suffered for the first time); *Abbot v Will Gannon & Smith Ltd* [2005] EWCA Civ 198, 103 ConLR 92, [2005] BLR 195.

The availability of the special time limit is not restricted to claims for damages in respect of physical damage but extends also to any case of negligence where the damage is not immediately discoverable: *Berg v Glentworth Bulb Co Ltd* (25 July 1988, unreported), CA.

2 Limitation Act 1980 s 14A(3), (4), (5) (as added: see note 1); and see *Mortgage Corp plc v Lambert & Co* [2000] BLR 265, [2000] All ER (D) 524, CA. For the purposes of a subrogation claim, it is the knowledge of the insurers (which includes the knowledge of a loss adjuster investigating and advising on the claim on their behalf) which is relevant, rather than that of the assured, even though the claim is brought in the name of the assured: *Graham v Entec Europe Ltd (t/a Exploration Associates)* [2003] EWCA Civ 1177, [2003] 4 All ER 1345, [2004] Lloyd's Rep IR 660.

3 Whether or not a claimant had the requisite knowledge within the limitation period is a question of fact, to be tried at trial or by way of a preliminary issue: *Busby v Cooper* (1996) 52 ConLR 94, (1996) Times, 15 April, CA.

4 Limitation Act 1980 s 14A(6)(a) (as added: see note 1).

5 It has been held that the fact that a claimant's conduct is understandable does not necessarily mean that it is reasonable: *Coban v Allen* [1997] 8 Med LR 316, (1996) Times, 14 October, CA (claimant was an illegal immigrant when his cause of action in negligence arose; he commenced proceedings when his status changed, arguing that, owing to his fear of the law, it was reasonable to delay seeking advice: the court held such fear was not sufficient and the claimant had failed to show that he had acted reasonably).

6 Limitation Act 1980 s 14A(7) (as added: see note 1). See also *Felton v Gaskill Osborne & Co* [1993] 2 EGLR 176 (knowledge relates to knowledge of the particular head of damage in respect of which the claimant seeks to claim damages and not damage in a general sense) (purchase of house in reliance on negligent survey report; certain defects discovered by the claimant within the normal six-year limitation period, but proceedings not commenced until discovery of more serious defects outside normal six-year limitation period; alternative three-year limitation period held to apply); *Hallam-Eames v Merrett Syndicates Ltd* [1996] 7 Med LR 122, (1995) Times, 25 January, CA (the act or omission of which the claimant should have knowledge must be causally relevant for the purposes of an allegation of negligence); *3M United Kingdom plc v Linklaters & Paines* [2006] EWCA Civ 530, [2006] 20 EG 292 (CS), [2006] All ER (D) 37 (May) (loss of benefit of break options in leases constituted sufficiently serious damage at the date of discovery, as claimant ought to have been aware of consequences at that time).

7 Limitation Act 1980 s 14A(6)(b), (8)(a) (as added: see note 1); and see *Haward v Fawcetts (a firm)* [2006] UKHL 9, [2006] 3 All ER 497, [2006] 1 WLR 682 (relevant knowledge in case of flawed investment advice; time ran from the date when the advice was given); cf *Brown v Bird and Lovibond (a firm)* [2002] EWHC 719 (QB), [2002] All ER (D) 290 (Feb) (claimant had no reason to inquire into solicitor's actions with regard to mortgage deed until bank started possession proceedings). See also *Shore v Sedgwick Financial Services Ltd* [2007] EWHC 2509 (Admin), [2007] All ER (D) 132 (Nov).

8 Limitation Act 1980 s 14A(6)(b), (8)(b) (as added: see note 1).

9 Limitation Act 1980 s 14A(6)(b), (8)(c) (as added: see note 1).

10 Limitation Act 1980 s 14A(9) (as added: see note 1). See *HF Pension Trustees Ltd v Ellison* [1999] Lloyd's Rep PN 489, [1999] All ER (D) 116 (where surplus pension funds were transferred unlawfully, in reliance on allegedly negligent legal advice, time started to run from the date of the transfer rather than from the date when it was appreciated that the advice might have been negligent). Cf *Oakes v Hopcroft* [2000] Lloyd's Rep PN 946, 56 BMLR 136, CA (where a personal injury claim was settled, in reliance on negligent legal advice, time started to run from the date when it was appreciated that the advice was negligent rather than from the date of the settlement).

11 Limitation Act 1980 s 14A(10) (as added: see note 1). See *Coban v Allen* [1997] 8 Med LR 316, (1996) Times, 14 October, CA (claimant's fear of his illegal immigration status being revealed is no excuse for not having sought expert advice which would have provided him with the knowledge required for bringing a claim); *Finance for Mortgages Ltd v Farley & Co (a firm)* [1996] NPC 19, [1998] PNLR 145 (mortgage company ought to have sought prompt retrospective valuation on mortgaged property once it became apparent that mortgagors were defaulting and could not be traced); *Abbey National plc v Sayer* (1999) Times, 30 August (mortgage company becoming sufficiently aware of losses caused by fraud to take proper precautions for the future, but deciding not to investigate past frauds, must be taken as having constructive knowledge of such frauds); *Webster v Cooper & Burnett (a firm)* [2000] Lloyd's Rep PN 167, [1999] All ER (D) 1086, CA (a person who has been given negligent advice by a solicitor in respect of a proposed mortgage is not absolved from looking at any document sent at a later date which he could reasonably have been expected to read and he will be deemed to have constructive knowledge of the contents of such a document for these purposes); *Khan v National Union of Rail, Maritime and Transport Workers* [2001] EWCA Civ 959, [2001] All ER (D) 45 (Jun) (in 1983, appellant was assaulted by fellow employee and advised by the union, who agreed to assist her in any claim, to make a claim to the Criminal Injuries Compensation Board; union's solicitors failed to submit her application, which should have been lodged early in 1984 and at the latest in September 1986, but did not inform her until June 1992 that there was no trace of her application having been submitted; held that the reasonable response to such information would have been to make inquiries and find out what had happened); *Harris Springs Ltd v Howes* [2007] EWHC 3271 (TCC), [2008] BLR 229, [2008] All ER (D) 60 (Feb) (claim that defendant structural engineer had negligently designed foundations of extension; held that, despite some previous correspondence between the defendant and the architect on the subject of some slight movement which was not thought to be significant, it would not have been reasonable for the claimant to have sought expert engineering advice from anyone other than the defendant prior to the cracking of a floor slab).

12 *McCarroll v Statham Gill Davies (a firm)* [2003] EWCA Civ 425, [2003] Lloyd's Rep PN 167, [2003] All ER (D) 12 (Apr); cf *Johnson v Chief Constable of Surrey* (1992) Times, 23 November, CA (a decision under the Limitation Act 1980 s 32(1)(b): see PARA 1220). See also *Hamlin v Edwin Evans (a firm)* [1996] 2 EGLR 106, 29 HLR 414, CA; *Oakes v Hopcroft* [2000] Lloyd's Rep PN 946 at 948, 56 BMLR 136 at 138, CA, per Lord Woolf CJ.

13 Limitation Act 1980 s 14B(1) (as added: see note 1).

14 Limitation Act 1980 s 14B(2) (as added: see note 1).

15 See *Financial Services Compensation Scheme Ltd v Larnell (Insurances) Ltd* [2005] EWCA Civ 1408, [2006] QB 808, [2005] All ER (D) 388 (Nov).

16 Ie claims to which the Limitation Act 1980 s 9 applies: see PARA 1005.

17 See *Martin v Britannia Life Ltd* [2000] Lloyd's Rep PN 412, [1999] All ER (D) 1495; applied in *Shore v Sedgwick Financial Services Ltd* [2007] EWHC 2509 (Admin), [2007] All ER (D) 132 (Nov).

18 *Laws v Society of Lloyd's* [2003] EWCA Civ 1887, (2004) Times, 23 January, [2003] All ER (D) 392 (Dec).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/B. NEGLIGENCE/983. Successive owners of property.

983. Successive owners of property.

Where a cause of action had accrued to any person in respect of any negligence to which damage to any property in which he has an interest is attributable, in whole or in part, and another person acquires an interest in it after the date of accrual of the original cause of action but before the material facts¹ about the damage have become known to any person who, at the time when he first had knowledge of those facts, has any interest in the property, a fresh cause of action in respect of that negligence accrues to that other person on the date on which he acquires his interest in the property². Such a cause of action is treated as if based on breach of a duty of care at common law owed to the person to whom it accrues and is treated for the purposes of the provisions relating to the special time limit³ as having accrued on the date on which the original cause of action accrued⁴. The provisions relating to extension of the limitation period in case of disability⁵ do not apply in relation to any such cause of action⁶. The proposition stated above does not apply in any case where the person acquiring an interest in the damaged property is either a person in whom the original cause of action vests by operation of law or a person in whom the interest vests by virtue of an order vesting company property in a liquidator⁷.

The above provisions⁸ apply only in cases where an interest in damaged property is acquired after 18 September 1986, but they apply, subject to certain exceptions⁹, irrespective of whether the original cause of action accrued before or after that date¹⁰.

1 As to the material facts see the Limitation Act 1980 s 14A; and PARA 982.

2 Latent Damage Act 1986 s 3(1). As to 'knowledge' (s 3(6)) and 'material facts' (s 3(5)) for these purposes see the equivalent provisions in relation to latent damage generally set out in PARA 982.

3 Ie the Limitation Act 1980 s 14A.

4 Latent Damage Act 1986 s 3(2).

5 Ie the Limitation Act 1980 s 28: see PARA 1170 et seq.

6 Latent Damage Act 1986 s 3(3).

7 Latent Damage Act 1986 s 3(4). Section 3 binds the Crown, but as regards the Crown's liability in tort does not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act 1947: Latent Damage Act 1986 s 3(7).

8 Ie the Latent Damage Act 1986 s 3.

9 Where a person acquires an interest in damaged property in circumstances to which the Latent Damage Act 1986 s 3 would otherwise apply, but the original cause of action accrued more than six years before 18 September 1986, a cause of action does not accrue to that person by virtue of s 3(1) unless the Limitation Act 1980 s 32(1)(b) (postponement of limitation period in case of deliberate concealment of relevant facts: see PARA 1226) would apply to any claim founded on the original cause of action: Latent Damage Act 1986 s 4(4).

10 Latent Damage Act 1986 s 4(3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/B. NEGLIGENCE/984. Negligence amounting to breach of contractual duty.

984. Negligence amounting to breach of contractual duty.

Where one person is employed by another to perform a duty and the failure to perform, or negligence in the performance of, that duty gives rise to a cause of action in contract, time runs from the date of the breach of contract, which will be the date of non-performance or negligence, and not from its being discovered or from the occurring of damage¹, unless:

- 62 (1) the claim is:
 - 1
 1. (a) based on fraud of the defendant; or
 2. (b) any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant; or
 3. (c) the claim is relief from the consequences of a mistake;
 - 2
 - 63 in which case time runs from the date the claimant discovered the fraud, concealment or mistake or could with reasonable diligence have discovered it²; or
 - 64 (2) the claimant can establish, in addition to the contractual duty owed by the defendant, a general duty of care owed as a matter of law³ in which case, in accordance with the rules applying to claims brought in the tort of negligence, time will run from the date when damage is sustained by the claimant⁴ or when he had the necessary knowledge to bring a claim in negligence⁵.

A contingent liability is not as such actionable damage, and no cause of action accrues, until the contingency occurs⁶.

1 See *Forster v Outred & Co* [1982] 2 All ER 753, [1982] 1 WLR 86, CA (mortgagor's claim against solicitors; time ran from date of mortgage); *National House-Building Council v Fraser* [1983] 1 All ER 1090 (guarantee by housebuilding company to comply with NHBC rules and to indemnify any loss; obligation arose when company failed to comply with rules and not when loss quantified); *DW Moore & Co Ltd v Ferrier* [1988] 1 All ER 400, [1988] 1 WLR 267, CA (negligent drafting of restrictive covenant in contract; time ran from the date of execution); *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA (failure to prepare deed of trust, sustained at time of transfer of property; failure to lodge application for caution also sustained at time of transfer, although remediable until sale of house); *Iron Trade Mutual Insurance Co Ltd v JK Buckenham Ltd* [1990] 1 All ER 808, [1989] 2 Lloyd's Rep 85; *Islander Trucking Ltd v Hogg Robinson & Gardner Mountain (Marine) Ltd* [1990] 1 All ER 826 (brokers' negligence in effecting insurance policies; cause of action accrued when contracts entered into); *Société Commerciale de Réassurance v ERAS (International) Ltd* [1992] 2 All ER 82n, [1992] 1 Lloyd's Rep 570, CA; *Howell v Young* (1826) 5 B & C 259; *Short v M'Carthy* (1820) 3 B & Ald 626; *Smith v Fox* (1848) 6 Hare 386; *Hughes v Twisden* (1886) 55 LJ Ch 481; *Bean v Wade* (1885) 2 TLR 157, CA; *Wood v Jones* (1889) 61 LT 551 (cases of alleged negligence by solicitors). As to allegations of negligent advice by solicitors see also *Havenledge Ltd v Graeme John & Partners (a firm)* [2000] All ER (D) 2333, CA; *Khan v RM Falvey & Co (a firm)* [2002] EWCA Civ 400, [2002] Lloyd's Rep PN 369, [2002] All ER (D) 361 (Mar); *Daniels v Thompson* [2004] EWCA Civ 307, (2004) Times, 23 March, [2004] All ER (D) 357 (Mar); *Polley v Warner Goodman & Streat (a firm)* [2003] EWCA Civ 1013, [2003] All ER (D) 400 (Jun); and see **NEGLIGENCE**. As to special limitation periods applying to personal injury claims see PARA 998 et seq.

2 See the Limitation Act 1980 s 32(1) (amended by the Consumer Protection Act 1987 Sch 1 Pt I para 5); and PARA 1220 et seq. See also *Armstrong v Milburn* (1886) 54 LT 723, CA, per Lord Esher MR.

3 *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80, [1985] 2 All ER 947, PC; *Lancashire and Cheshire Association of Baptist Churches Inc v Howard & Seddon Partnership* [1993] 3 All ER 467.

4 See *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA; *Lancashire and Cheshire Association of Baptist Churches Inc v Howard & Seddon Partnership* [1993] 3 All ER 467; and PARA 980. In the case of negligent misstatement, time will run from the date when damage is sustained, which is normally the date of reliance on the statement. Damage may be sustained, thereby starting the running of time, notwithstanding that the loss was not quantifiable on the date of damage: *Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)* [1998] 1 All ER 305, [1997] 1 WLR 1627, HL (claim for damages in respect of a negligent valuation of an intended loan security; date on which the lender's cause of action arose, and from which interest could be awarded, was the date on which the lender actually suffered the loss attributable to the valuer's breach of duty, which could be before the lender's security had been realised and its true value ascertained; distinguished in *Watkins v Jones Maidment Wilson (a firm)* [2008] EWCA Civ 134, 118 ConLR 1, [2008] All ER (D) 27 (Mar)); and see *Sullivan v Layton Lougher & Co* [1995] 2 EGLR 111, CA. It will be a question of fact to determine whether damage was sustained at the time of reliance or some later date: see *UBAF Ltd v European American Banking Corp* [1984] QB 713, [1984] 2 All ER 226, CA; *First National Commercial Bank plc v Humberts* [1995] 2 All ER 673, CA; and *Tabarrok v EDC Lord & Co* [1997] PNL 491, (1997) Times, 14 February, CA.

5 See the Limitation Act 1980 s 14A (added by the Latent Damage Act 1986 s 1); and PARA 982. See also *Bell v Peter Browne & Co* [1990] 2 QB 495, [1990] 3 All ER 124, CA. The Limitation Act 1980 s 14A does not apply to claims framed in contract where the breach alleged is a breach of an implied duty of care; to fall within the provision, the claim must be framed in negligence: *Iron Trade Mutual Insurance Co Ltd v JK Buckenham Ltd* [1990] 1 All ER 808, [1989] 2 Lloyd's Rep 85, CA.

6 *Law Society v Sephton & Co* [2006] UKHL 22, [2006] 2 AC 543, [2006] 3 All ER 401 (solicitor's misappropriations giving rise to the possibility of a liability to pay a grant out of the Solicitors' Compensation Fund, contingent upon the misappropriation not being otherwise made good and a claim in the proper form being made; cause of action did not accrue in the Law Society's favour against the defendant until it first received a claim on its fund from one of the defendant's clients); distinguished in *Watkins v Jones Maidment Wilson (a firm)* [2008] EWCA Civ 134, 118 ConLR 1, [2008] All ER (D) 27 (Mar). See also *Gordon v JB Wheatley & Co (a firm)* (2000) Times, 6 June, [2000] All ER (D) 726, CA (where a claimant suffered loss as a result of the failure of a solicitor to advise him that he had set up a private mortgage scheme in the form of a collective investment scheme which might be investigated by the Securities and Investments Board (now replaced by the Financial Services Authority), the loss occurred every time an investor made an investment into the pooled scheme).

UPDATE

984 Negligence amounting to breach of contractual duty

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 6--See *Axa Insurance Ltd v Akther & Darby Solicitors* [2009] EWCA Civ 1166, (2010) 127 ConLR 50 (claimant insurer's claim alleging professional negligence in relation to the defendant panel solicitors' conduct in respect of an after the event legal expenses scheme was time barred, pursuant to the Limitation Act 1980 s 2, on the basis that the damage began to accrue when the policies were issued).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/C. BREACH OF STATUTORY DUTY/985. Breach of statutory duty.

C. BREACH OF STATUTORY DUTY

985. Breach of statutory duty.

The right of action for breach of statutory duty is distinct from a right of action for negligence, although it is a common law right¹. The period of limitation of six years from accrual of the cause of action, laid down for claims founded on tort², applies to a claim for breach of statutory duty³.

In certain cases where civil liability for damage is imposed by statute, it is provided that for the purposes of the Limitation Act 1980 any damage for which a person is so liable is to be treated as due to his fault⁴.

1 See **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 416.

2 See generally PARA 979. As to personal injury claims and the special time limit applicable thereto see PARA 998 et seq.

3 See eg *Clarkson v Modern Foundries Ltd* [1958] 1 All ER 33, [1957] 1 WLR 1210. Where the Crown is in breach of a duty imposed by a European Directive, that breach is a continuing one and gives rise to a fresh cause of action on each occasion when the claimant suffers consequential damage: *Phonographic Performance Ltd v Department of Trade and Industry* [2004] EWHC 1795 (Ch), [2005] 1 All ER 369, [2004] 1 WLR 2893. Contrast *Moore v Secretary of State for Transport* [2007] EWHC 879 (QB), [2007] All ER (D) 152 (Apr); affd sub nom *Spencer v Secretary of Work and Pensions, Moore v Secretary of State for Transport* [2008] EWCA Civ 750, [2008] All ER (D) 20 (Jul) (claimant became the victim of an untraced driver; failure to implement EEC Council Directive 84/5 (OJ L8, 11.1.84, p 17) on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles (the Second Motor Insurance Directive) did not give rise to separate and distinct causes of action which went on accruing after the date of the original cause of action). As to civil rights of action for breach of statutory duty generally see **TORT** vol 97 (2010) PARA 495 et seq.

4 See eg the Animals Act 1971 s 10 (referring to damage by dangerous animals, dogs or trespassing livestock (ss 2-4)); and **ANIMALS** vol 2 (2008) PARAS 747, 757. See also the Control of Pollution Act 1974 s 88(4) (referring to damage caused by noxious waste (s 88(1)); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 660.

UPDATE

985-987 Breach of statutory duty ... Conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/D. FRAUD/986. The general limitation period in cases of fraud.

D. FRAUD

986. The general limitation period in cases of fraud.

A claim for deceit is a claim in tort for which the period of limitation is six years¹, and in relation to equitable remedies equity followed the statute and applied the same period of limitation². However, the running of time for any claim based on fraud, or where any fact relevant to the claimant's cause of action is deliberately concealed by the defendant or his agent, does not begin until the fraud or concealment has been discovered or could with reasonable diligence be discovered³. Similarly, the limitation period applied in equity by analogy will be postponed until the fraud is discovered⁴.

1 See the Limitation Act 1980 s 2; and PARA 979. As to the exception of equitable relief from the scope of this provision see s 36; and PARA 954.

2 For a case where the equitable remedy of rescission of a transaction for fraud was claimed see eg *Molloy v Mutual Reserve Life Insurance Co* (1906) 94 LT 756 at 760-761, CA; *Oelkers v Ellis* [1914] 2 KB 139; and *Redgrave v Hurd* (1881) 20 ChD 1 at 13, CA. The fraud must be that of the party sued or his agent acting within the scope of his authority: *Thorne v Heard and Marsh* [1895] AC 495, HL.

3 Limitation Act 1980 s 32(1) (amended by the Consumer Protection Act 1987 Sch 1 Pt I para 5). Inherent in the Limitation Act 1980 s 32(1) is an assumption that the claimant desires to discover whether there has been a fraud: *Law Society v Sephton & Co* [2006] UKHL 22, [2006] 2 AC 543, [2006] 3 All ER 401. Postponement of the limitation period in cases of fraud and concealment is fully discussed at PARA 1220 et seq. See also *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400 at 418, CA, per Millett LJ (burden of proof in cases of fraud etc) (applied in *Biggs v Sotnick's (a firm)* [2002] EWCA Civ 272, [2002] All ER (D) 205 (Jan)); *Collins v Brebner* [2000] Lloyd's Rep PN 587, CA; *Foreman v O'Driscoll & Partners (a firm)* [2000] Lloyd's Rep PN 720; *Khan v National Union of Rail, Maritime and Transport Workers* (17 January 2000, unreported), CA; *Williams v Fanshaw Porter & Hazelhurst (a firm)* [2004] EWCA Civ 157, [2004] 2 All ER 616, [2004] 1 WLR 3185 (firm of solicitors deliberately concealing from its client the entering of a consent order on her behalf with the effect of dismissing her medical negligence claim); *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA; *Costa v Georgiou* [1984] NLJR 82; *Gray v TP Bennett & Son* (1987) 43 BLR 63. It is the fraud which should be discoverable, not the identity of the perpetrator: *RB Policies at Lloyd's v Butler* [1950] 1 KB 76. Concealment by the defendant cannot wipe out a fact already known so as to set time running afresh: *Ezekiel v Lehrer* [2002] EWCA Civ 16, [2002] Lloyd's Rep PN 260, [2002] All ER (D) 267 (Jan). A claim for fraudulent misrepresentation is a claim based on fraud for limitation purposes: *Regent Leisuretime Ltd v Natwest Finance (formerly County NatWest Ltd)* [2003] EWCA Civ 391, 147 Sol Jo LB 386, [2003] All ER (D) 385 (Mar).

4 See **EQUITY** vol 16(2) (Reissue) PARAS 919-920. After discovery of the fraud, time would run by analogy with the statute of limitations: see the Limitation Act 1980 s 36(1); and *South Sea Co v Wymondsell* (1732) 3 P Wms 143; *Hovenden v Lord Annesley* (1806) 2 Sch & Lef 607 at 633; *Rolfe v Gregory* (1865) 4 De GJ & Sm 576 at 579; and *Lynn v Bamber* [1930] 2 KB 72 at 79.

As to cases of fraud in equity, as where a person receiving trust property with knowledge of the trust becomes a constructive trustee of that property, see *Rolfe v Gregory* (1865) 4 De GJ & Sm 576; the Limitation Act 1980 s 21; and PARAS 1140-1148. See further *Re Shephard, Shephard v Cartwright* [1953] Ch 728 at 756, [1953] 2 All ER 608 at 619, CA, per Denning LJ (approved sub nom *Shephard v Cartwright* [1955] AC 431 at 450, [1954] 3 All ER 649 at 655, HL, per Viscount Simonds); and *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532 (revsd and new trial on amended pleadings ordered [1958] 3 All ER 540, [1958] 1 WLR 1216, CA).

UPDATE

985-987 Breach of statutory duty ... Conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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E. CONVERSION AND THEFT

987. Conversion.

In a claim for conversion of goods¹, being a claim founded on tort, the applicable limitation period is six years². At the expiration of the limitation period, if the claimant has not during that period recovered possession of the chattel, his title to it is extinguished³.

Time runs from the date of the conversion even where the claimant is ignorant of the conversion⁴ or the identity of the defendant⁵ unless:

- 65 (1) any fact relevant to the claimant's cause of action has been deliberately concealed by the defendant or his agent⁶, in which case, time will run from the date when the claimant could reasonably have discovered the concealment⁷; or
- 66 (2) the goods were stolen from the claimant (unless the conversion was unrelated to the theft)⁸, in which case, time will run from the date of the first conversion of the goods unrelated to the theft⁹; or
- 67 (3) the claimant and defendant stand in the relationship of beneficiary and trustee¹⁰.

No period of limitation applies to a claim brought by a beneficiary against a trustee to recover trust property¹¹.

If goods have been converted and afterwards sold, and the claimant sues for money had and received, time still runs from the conversion and not from the receipt of the money¹².

Where, in the absence of an agreed date for their return, goods are wrongfully detained by a bailee after a demand for their return, then for the purpose of a claim against the bailee for conversion¹³ time runs from the wrongful refusal of the demand for the return of the goods or their equivalent¹⁴. Where goods are detained by a bailee beyond an agreed date for return, time runs from that agreed date¹⁵.

1 As to conversion of goods generally see **TORT** vol 45(2) (Reissue) PARA 548 et seq.

2 Limitation Act 1980 s 2; and see PARA 979.

3 Limitation Act 1980 s 3(2).

4 *Granger v George* (1826) 5 B & C 149; and see *Edwards v Clay* (1860) 28 Beav 145; *Hinchcliffe v Sharpe* (1898) 77 LT 714; and *Betts v Metropolitan Police District Receiver and Carter Paterson & Co Ltd* [1932] 2 KB 595. As to the principle that a refusal to deliver up a chattel on demand may be evidence of a conversion see eg *Pillot v Wilkinson* (1863) 2 H & C 72; and **TORT** vol 45(2) (Reissue) PARA 556.

5 *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226.

6 See the Limitation Act 1980 s 32(1)(b) (amended by the Consumer Protection Act 1987 Sch 1 para 5); and PARA 1220. See also PARA 989.

7 See the Limitation Act 1980 s 32(1); and PARA 1220 et seq.

8 See the Limitation Act 1980 s 4; and PARA 990.

9 Limitation Act 1980 s 4(2); and see *Kurtha v Marks* [2008] EWHC 336 (QB), [2008] All ER (D) 379 (Feb).

10 See the Limitation Act 1980 s 21(1).

11 See the Limitation Act 1980 s 21; and PARA 1140.

12 *Denys v Shuckburgh* (1840) 4 Y & C Ex 42; and see *Goding v Ferris* (1791) 2 Hy Bl 14; *Crook v M'Tavish* (1832) 1 Bing 167; and *Fraser v Swansea Canal Co* (1834) 1 Ad & El 354.

13 A claim lies in conversion for loss or destruction of goods which a bailee has allowed to happen in breach of his duty to his bailor (ie it lies in a case which is not otherwise conversion but would have been detinue before detinue was abolished by the Torts (Interference with Goods) Act 1977 s 2(1)): s 2(2). See further **BAILMENT; TORT** vol 45(2) (Reissue) PARA 543.

14 *Re Tidd, Tidd v Overell* [1893] 3 Ch 154; and see *Schwarzschild v Harrods Ltd* [2008] EWHC 521 (QB), [2008] All ER (D) 299 (Mar). This will be so only where the bailee has committed no wrong in relation to the goods other than a refusal to return them upon demand; where the bailee has disposed of or destroyed the goods without authority or has retained them beyond an agreed date for their return, time will run from the date of disposal or destruction on the one hand or the agreed date for return on the other: see PARA 988; and **BAILMENT** vol 3(1) (2005 Reissue) PARA 85.

15 See *British Crane Hire Corp'n Ltd v Ipswich Plant Hire Ltd* [1975] QB 303, [1974] 1 All ER 1059, CA.

UPDATE

985-987 Breach of statutory duty ... Conversion

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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988. Successive conversions; extinction of owner's title.

Where any cause of action in respect of the conversion of goods¹ has accrued to any person and, before he recovers possession of the goods, a further conversion takes place, no claim may be brought in respect of the further conversion after the expiration of six years from the accrual of the cause of action in respect of the original conversion². Where any such cause of action has accrued to any person and he has not during that period recovered possession of the goods, that person's title to them is extinguished³. If, however, a person would otherwise⁴ have a cause of action in respect of the conversion of a chattel, and proceedings are started under the Proceeds of Crime Act 2002⁵ for a recovery order⁶ in respect of the chattel, the above provision with regard to extinction of title does not prevent his asserting on an application under the relevant provision of the 2002 Act⁷ that the property belongs to him, or the court making a declaration in his favour under that provision⁸. If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished⁹. Similar provisions apply where proceedings are started under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005¹⁰ for a recovery order in respect of a chattel¹¹.

¹ As to the running of time in claims for conversion see PARA 987. As to conversion generally see **TORT** vol 45(2) (Reissue) PARA 548 et seq.

² Limitation Act 1980 s 3(1). Time runs from the first conversion even if it was by an unknown thief: see *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226. As to cases of theft see the Limitation Act 1980 s 4; and PARA 990.

³ Limitation Act 1980 s 3(2). As to the effect of fraudulent concealment of the right of action see PARA 989.

Any cause of action accruing in respect of the theft or any conversion related to the theft of a chattel to any person from whom the chattel is stolen is disregarded for the purpose of applying s 3(1), (2): s 4(3); and see PARA 990.

⁴ Ie but for the provisions of the Limitation Act 1980 ss 1-27.

⁵ Ie under the Proceeds of Crime Act 2002 Pt 5 Ch 2 (ss 243-288): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2150 et seq.

⁶ As to the meaning of 'recovery order' see the Proceeds of Crime Act 2002 ss 266, 316(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2154.

⁷ Ie under the Proceeds of Crime Act 2002 s 281: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2160.

⁸ See the Limitation Act 1980 s 27A(5) (s 27A added by the Proceeds of Crime Act 2002, s 288(1)).

⁹ Limitation Act 1980 s 27A(6) (as added: see note 8). See further PARA 1013.

¹⁰ Ie under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, Pt 5 Ch 2 (arts 143-201): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2164.

¹¹ See the Limitation Act 1980 s 27B(5), (6); and PARA 1014.

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989. Deliberate concealment of conversion.

If, in the case of a claim founded on conversion, any fact relevant to a claimant's right of action is deliberately concealed by the defendant or his agent or of any person through whom he claims or his agent, the period of limitation does not begin to run until the claimant has discovered the fraud or could with reasonable diligence have discovered it¹. In such a case it seems that the operation of the statutory provision for the extinction of the title to chattels² will likewise be postponed.

1 Limitation Act 1980 s 32(1); and see *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA. It is unclear whether the fact that the claimant's agent could have discovered the concealment will be sufficient to start time running against the claimant: see PARAS 1221, 1223.

A claim for conversion per se is not a claim based on fraud for the purposes of the Limitation Act 1980 s 32(1): *Beaman v ARTS Ltd*. As to the effect of deliberate concealment see further PARA 1226. Time is not prevented from running merely because the owner of a chattel is ignorant of the identity of the person who has converted it, if he is aware that a conversion has taken place: *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226.

2 I.e the Limitation Act 1980 s 3(2): see PARA 988.

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990. Theft etc.

The right of any person from whom a chattel is stolen to bring a claim in respect of the theft¹ is not subject to the time limits for tort and conversion set out in the Limitation Act 1980², but if his title to the chattel is extinguished³ he may not bring a claim in respect of a theft preceding the loss of his title, unless the theft in question preceded the conversion from which time began to run⁴. This provision applies to any conversion related to the theft of a chattel as it applies to the theft of a chattel; and except as otherwise provided⁵, every conversion following the theft of a chattel before the person from whom it is stolen recovers possession of it is regarded as related to the theft⁶. If anyone purchases the chattel in good faith neither the purchase nor any conversion following it is regarded as relating to the theft⁷.

A member state of the European Union has a right of action against the possessor or, failing him, the holder, for the return of a cultural object which has been unlawfully removed from its territory⁸. The Limitation Act 1980 does not apply to such claims⁹ but a competent court must not make an order for the return of the object if it is satisfied that the proceedings were brought more than one year after the member state became aware of the location of the cultural object and of the identity of its possessor or holder, or that that they were brought after the expiry of the special limitation period¹⁰, which is 75 years in the case of objects forming part of public collections and of ecclesiastical goods subject to special protection arrangements under the national law of the member state¹¹, and 30 years in any other case¹², commencing with the date on which the object was unlawfully removed from the territory of the requesting member state¹³.

1 'Theft' includes (1) any conduct outside England and Wales which would be theft if committed in England and Wales; and (2) obtaining any chattel (in England and Wales or elsewhere) by blackmail (within the meaning of the Theft Act 1968 s 21), or fraud (within the meaning of the Fraud Act 2006), and references to a chattel being stolen are construed accordingly: Limitation Act 1980 s 4(5) (amended by the Fraud Act 2006 Sch 1 para 18). As to the application of the English law of theft to a case where a chattel was converted outside the jurisdiction see *Bumper Development Corp'n Ltd v Metropolitan Police Comr* [1991] 4 All ER 638, [1991] 1 WLR 1362, CA.

2 Ie the Limitation Act 1980 ss 2, 3(1): see PARAS 979, 988.

3 Ie under the Limitation Act 1980 s 3(2): see PARA 988.

4 Ie for the purposes of the Limitation Act 1980 s 3(2): s 4(1). Note however that any cause of action accruing in respect of the theft or any conversion related to the theft of a chattel to any person from whom the chattel is stolen is disregarded for the purpose of applying s 3(1), (2): s 4(3); and see PARA 988.

5 Ie as provided under the Limitation Act 1980 s 4(3)-(5).

6 Limitation Act 1980 s 4(2). Where in any claim brought in respect of the conversion of a chattel it is proved that the chattel was stolen from the claimant or anyone through whom he claims, it is presumed that any conversion following the theft is related to the theft unless the contrary is shown: s 4(4).

7 See the Limitation Act 1980 s 4(2).

8 See the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1098.

9 See the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(9).

10 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(6).

- 11 See the Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(7).
- 12 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(8).
- 13 Return of Cultural Objects Regulations 1994, SI 1994/501, reg 6(7), (8).

UPDATE

990-991 Theft etc, Extinction of title on satisfaction of claim for damages

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/E. CONVERSION AND THEFT/991. Extinction of title on satisfaction of claim for damages.

991. Extinction of title on satisfaction of claim for damages.

Where damages for wrongful interference of goods¹ are, or would fall to be, assessed on the footing that the claimant is being compensated (1) for the whole of his interest in the goods; or (2) for the whole of his interest in the goods subject to a reduction for contributory negligence, then payment of the assessed damages (under all heads), or, as the case may be, settlement² of a claim for damages for the wrong (under all heads) extinguishes the claimant's title to that interest³. This does not apply, however, where damages are assessed on the footing that the claimant is being compensated for the whole of his interest in the goods, but the damages paid are limited to some lesser amount by virtue of any enactment or rule of law⁴.

Where the claimant accounts over to a third person⁵ so as to compensate him (under all heads) for the whole of his interest in the goods, the third person's title to that interest is extinguished⁶.

These provisions have effect subject to any agreement varying the respective rights of the parties to the agreement, and where the claim is made in court proceedings, have effect subject to any order of the court⁷.

1 'Wrongful interference with goods' means (1) conversion of goods; (2) trespass to goods; (3) negligence so far as it results in damage to goods or to an interest in goods; and (4) any other tort so far as it results in damage to goods or to an interest in goods, and references to proceedings for wrongful interference or to a claim or right to a claim for wrongful interference include references to proceedings by virtue of the Consumer Protection Act 1987 Pt I (ss 1-9) (product liability) in respect of any damage to goods or to an interest in goods or, as the case may be, to a claim or right to a claim by virtue of those provisions in respect of any such damage: see the Torts (Interference with Goods) Act 1977 s 1 (amended by the Consumer Protection Act 1987 Sch 4 para 5). 'Goods' includes all chattels personal, other than things in claim and money: see the Torts (Interference with Goods) Act 1977 s 14(1).

2 'Settlement of the claim' includes (1) where the claim is made in court proceedings and the defendant has paid a sum into court to meet the whole claim, the taking of that sum by the claimant; (2) where the claim is made in court proceedings and the proceedings are settled or compromised, the payment of what is due in accordance with the settlement or compromise; and (3) where the claim is made out of court and is settled or compromised, the payment of what is due in accordance with the settlement or compromise: Torts (Interference with Goods) Act 1977 s 5(2).

3 Torts (Interference with Goods) Act 1977 s 5(1).

4 Torts (Interference with Goods) Act 1977 s 5(3).

5 See under the Torts (Interference with Goods) Act 1977 s 7(3); and see **TORT** vol 45(2) (Reissue) PARA 637.

6 Torts (Interference with Goods) Act 1977 s 5(4).

7 Torts (Interference with Goods) Act 1977 s 5(5).

UPDATE

990-991 Theft etc, Extinction of title on satisfaction of claim for damages

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/E. CONVERSION AND THEFT/992. Title deeds.

992. Title deeds.

A person who is in possession of land is prima facie entitled to possession of the title deeds¹. It seems therefore that if a person other than the true owner is in possession both of land and of the title deeds, there can be no conversion of the deeds until the true owner establishes his title to the land and that, so long as the true owner's right to recover the land is not barred, his right to recover the deeds subsists².

Even if the true owner is in possession of the land to which the title deeds relate, although not of the title deeds themselves, it is possible, on the view that title deeds are not to be treated as mere chattels but as ancillary to the land, that he may be entitled to maintain a claim to recover possession of the title deeds even though time would have run³ against a claim to recover a mere chattel in similar circumstances⁴.

1 See eg *Lewis v Plunket* [1937] Ch 306, [1937] 1 All ER 530; and **REAL PROPERTY** vol 39(2) (Reissue) PARA 87.

2 *Plant v Cotterill* (1860) 5 H & N 430 at 440; and see *Lewis v Plunket* [1937] Ch 306, [1937] 1 All ER 530 (mortgagor entitled to recover title deeds when mortgaged title to land became statute-barred).

3 See PARAS 952, 987-988.

4 See *Miller v Dell* [1891] 1 QB 468 at 471-472, CA. The decisions in that case and in *Spackman v Foster* (1883) 11 QBD 99, DC, are overruled by the Limitation Act 1980 s 3 (see PARA 988), except in so far as they can be held to be based on special principles applying to claims to recover title deeds. Cf *Beaumont v Jeffery* [1925] Ch 1 (defendant in possession of ancient court rolls of manor; defendant's possession must be presumed to be lawful and derived from disposition of the rolls by a former lord or his steward; claim of lord barred as six years had elapsed since the third party had asserted an adverse title by advertising the rolls for sale). See also *Dean and Chapter of Wells v Doddington* (1845) 2 Coll 73. The disposition of court rolls is no longer permitted: see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 701; and as to manorial records see further **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARAS 933, 813.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/F. TRESPASS/993. Trespass to land or goods.

F. TRESPASS

993. Trespass to land or goods.

In a claim for trespass to land or goods time runs from the time when the trespass is committed, or, if several acts of trespass are committed, from the date of each act¹, unless the trespass was secret and fraudulent, in which case time does not run so long as the party defrauded remains in ignorance through no fault of his own². If a wrongful working of minerals is only inadvertent, time runs from the date of the working³.

1 Thus in a claim for mesne profits (which is a claim of trespass), only arrears for six years before claim can be recovered: see *Reade v Reade* (1801) 5 Ves 744. As to claims against personal representatives see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 828 et seq.

2 *Bulli Coal Mining Co v Osborne* [1899] AC 351, PC (considered in *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA). See also the Limitation Act 1980 s 32(1); and PARA 1220 et seq.

3 *Dean v Thwaite* (1855) 21 Beav 621; *Trotter v Maclean* (1879) 13 ChD 574. Omitting to enter workings in a map is not of itself sufficient evidence of fraud: *Dawes v Bagnall* (1875) 23 WR 690. As to the effect of fraud generally see PARA 1220 et seq.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/F. TRESPASS/994. Trespass to the person.

994. Trespass to the person.

The limitation period in a claim for damages for personal injury for an intentional trespass to the person is three years¹, as with other claims in respect of personal injuries²; and this period is subject to extension or exclusion where the claimant lacks the necessary knowledge to commence proceedings within the three-year limitation period³ and where it appears to the court that it would be equitable to allow the claim to proceed notwithstanding that the three-year period of limitation has expired⁴.

1 le that contained in the Limitation Act 1980 s 11: see PARA 998 et seq.

2 See *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1, overruling *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL and approving *Letang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA. As to trespass to the person generally see **TORT** vol 97 (2010) PARA 524 et seq.

3 See the Limitation Act 1980 ss 11, 14; and PARA 998 et seq.

4 See the Limitation Act 1980 s 33; and PARA 1001.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/F. TRESPASS/995. False imprisonment and malicious arrest.

995. False imprisonment and malicious arrest.

Where a claim is brought for false imprisonment and the imprisonment began more than six years¹ before claim but continued to a time within that period, damages for so much of the imprisonment as took place within the six years before claim may be recovered, although a plea of statutory limitation prevents the recovery of damages for so much of the imprisonment as took place outside that period².

In a claim for malicious arrest time runs from the act of the defendant in putting the law into motion, not from any imprisonment which follows as a result of it³.

1 As to the six-year limitation period applicable see PARA 952.

2 *Coventry v Apsley* (1691) 2 Salk 420; and see *Massey v Johnson* (1809) 12 East 67; *Bailey v Warden* (1815) 4 M & S 400; *O'Connor v Isaacs* [1956] 2 QB 288, [1956] 2 All ER 417, CA (even though, by virtue of the Justices of the Peace Act 1979 s 45 (repealed) a claim against justices for false imprisonment could not be brought until their order had been quashed, time ran from the imprisonment and not the quashing of the order). As to false imprisonment generally see **TORT** vol 97 (2010) PARA 542 et seq.

3 *Violett v Simpson* (1857) 8 E & B 344, a case of detainer under the old practice in bankruptcy proceedings. As to malicious arrest on civil process see **TORT** vol 97 (2010) PARA 664. In a claim for malicious prosecution time runs from the date at which the loss which is followed by damage arises, not from the date when a conviction was set aside: see *O'Connor v Isaacs* [1956] 2 QB 288 at 325, [1956] 1 All ER 513 at 533 per Diplock J (affd [1956] 2 QB 288, [1956] 2 All ER 417, CA).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iii) Tort/G. DEFAMATION/996. Libel, slander and malicious falsehood; the limitation period.

G. DEFAMATION

996. Libel, slander and malicious falsehood; the limitation period.

The time limit applicable to claims for libel or slander, or for slander of title, slander of goods or other malicious falsehood, is one year from the date on which the cause of action accrued¹ or, in the case of a person under a disability, one year from the date on which he ceased to be under a disability².

If it appears to the court³ that it would be equitable to allow a claim to proceed having regard to the degree to which:

- 68 (1) the operation of the statutory time limit⁴ prejudices the claimant or any person whom he represents; and
- 69 (2) any decision of the court under this provision would prejudice the defendant or any person whom he represents,

the court may direct that that time limit is not to apply to the claim or is not to apply to any specified cause of action to which the claim relates⁵. In so acting the court must have regard to all the circumstances of the case and in particular to:

- 70 (a) the length of, and the reasons for, the delay on the part of the claimant⁶;
- 71 (b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the claimant until after the end of the statutory limitation period⁷:

3

- 4. (i) the date on which any such facts did become known to him; and
- 5. (ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to a claim; and

4

- 72 (c) the extent to which, having regard to the delay, relevant evidence is likely to be unavailable, or to be less cogent than if the claim had been brought within the statutory limitation period⁸.

The expiry of this statutory time limit is no bar to equitable relief⁹.

The above provisions apply to causes of action arising after 4 September 1996¹⁰.

1 See the Limitation Act 1980 s 4A (added by the Administration of Justice Act 1985 s 57(3); substituted by the Defamation Act 1996 s 5(1), (2), (6)). Where the facts alleged as giving rise to a claim for relief under the head of 'wrongful interference with rights' are facts which fall within the description 'other malicious falsehood', then the claim is subject to the one-year limit, even though the label of 'wrongful interference with rights' is an appropriate alternative description: see *Cornwall Gardens Pte Ltd v RO Garrard & Co Ltd* [2001] EWCA Civ 699, (2001) Times, 19 June.

As the cause of action in relation to a defamation claim accrues on publication (see PARA 997), it is irrelevant for limitation purposes whether an author's identity becomes known before the expiry of the one-year limitation period: *Edwards v Golding* [2007] EWCA Civ 416, (2007) Times, 22 May, [2007] All ER (D) 36 (Apr).

2 See the Limitation Act 1980 s 28(4A) (added by the Administration of Justice Act 1985 s 57(3); substituted by the Defamation Act 1996 s 5(1), (3), (6)). As to the meaning of 'disability' see PARA 1170.

3 For these purposes, 'the court' means the court in which the claim has been brought: Limitation Act 1980 s 32A(4) (s 32A added by the Administration of Justice Act 1985 s 57(4); substituted by the Defamation Act 1996 s 5(1), (4), (6)).

4 Ie the operation of the Limitation Act 1980 s 4A.

5 Limitation Act 1980 s 32A(1) (as substituted: see note 3). As to the exercise of the discretion under s 32A see *Steedman v BBC* [2001] EWCA Civ 1534, [2002] EMLR 318, [2001] All ER (D) 316 (Oct); *Heard v Kemp* [2002] EWCA Civ 1506; *Maccaba v Lichenstein* [2003] EWHC 1325 (QB), [2003] All ER (D) 266 (Apr); *Hunter (t/a Connect Computers) v Rxworks.com Ltd* [2005] All ER (D) 162 (Jun); *Adelson v Associated Newspapers Ltd* [2007] EWHC 3028 (QB), [2007] All ER (D) 305 (Dec). The factors bearing upon the exercise of that discretion are in substance the same as the factors bearing upon the exercise of the discretion under CPR 17.4(2) (see PARA 931): *Wood v Chief Constable of the West Midlands Police* [2004] EWCA Civ 1638, [2005] EMLR 449, [2004] All ER (D) 107 (Dec). In determining whether or not the claimant is prejudiced by the operation of the limitation period, the court is likely to have regard to the criteria established in relation to personal injury cases decided under Limitation Act 1980 s 33, as to which see PARAS 1001-1002.

6 In the case of a claim for slander of title, slander of goods or other malicious falsehood brought by a personal representative, the references in the Limitation Act 1980 s 32A(2) to the claimant are to be construed as including the deceased person to whom the cause of action accrued and any previous personal representative of that person; and nothing in s 28(3) (death of person under a disability to whom right of action of deceased person under disability has accrued: see PARA 1171) is to be construed as affecting the court's discretion under s 32A: s 32A(3) (as substituted: see note 3).

7 Ie the period mentioned in the Limitation Act 1980 s 4A.

8 Limitation Act 1980 s 32A(2) (as substituted: see note 3). In cases of libel and slander, where the cause of action accrued before 4 September 1996 and all or any of the facts relevant to a person's cause of action did not become known to him until after the expiration of the then applicable three-year period, the High Court has a discretion to permit a claim to be brought at any time before the expiration of one year from the earliest date on which he knew all the facts relevant to his cause of action: see s 32A (as originally enacted). The grant of such leave is discretionary and there are no limits on the exercise of that discretion; however, it has been held that the term 'facts relevant to [the] cause of action' refers only to the relevant facts which the claimant must prove to establish a prima facie case in libel, not to facts which would tend to rebut a possible defence: *C v Mirror Group Newspapers* [1996] 4 All ER 511, [1997] 1 WLR 131, CA (claimant told statement at issue was privileged, but later discovered this was not so; Limitation Act 1980 s 32A (as originally enacted) not applicable). As to malicious falsehood, where the cause of action arose before 4 September 1996 the six-year limitation period is not capable of extension.

9 See the Limitation Act 1980 s 36(1)(aa) (added by the Administration of Justice Act 1985 s 57(5); substituted by the Defamation Act 1996 s 5(1), (5), (6)). As to amendment of pleadings in a breach of contract case so as to plead libel outside the limitation period see the Limitation Act 1980 s 35; *Lloyds Bank plc v Rogers* (1997) Times, 24 March, CA; and PARAS 929, 944.

10 Defamation Act 1996 ss 5(6), 19(2).

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997. Accrual of cause of action.

In a claim for libel time runs from the date of publication¹, but where for example a book or newspaper is published and offered for sale, a fresh cause of action arises on each sale, notwithstanding that the limitation period has elapsed since the first publication². In a claim for slander where the words are actionable without proof of special damage, time runs from the uttering of the slander³; where the words are not actionable without special damage, time does not run until the damage occurs⁴.

1 See eg *Edwards v Golding* [2007] EWCA Civ 416, (2007) Times, 22 May, [2007] All ER (D) 36 (Apr).

2 *Duke of Brunswick v Harmer* (1849) 14 QB 185, where a claim was brought in 1848 to recover damages for a libel published in a newspaper in 1830, and the plea of the statute of limitation was held to be negated by proof of the sale of one copy just before claim. Where the libel is by broadcast words, the time presumably runs from the broadcasting or latest broadcasting. As to the publication of a libel by broadcasting see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 76.

3 As to when words are actionable without proof of damage see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 50-59.

4 *Saunders v Edwards* (1662) 1 Sid 95; *Littleboy (Littlebury) v Wright* (1662) 1 Sid 95; and see *Darley Main Colliery Co v Mitchell* (1886) 11 App Cas 127, HL. In such a case the period of limitation is one year from the happening of the damage: see PARAS 921, 996.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iv) Personal Injury Claims/998. The limitation period.

(iv) Personal Injury Claims

998. The limitation period.

A special time limit is provided under the Limitation Act 1980 for claims in respect of personal injuries and, in cases to which this provision applies, no other time limit provided by the 1980 Act will apply¹. Any claim² for damages for negligence, nuisance or breach of duty, including intentional trespass to the person³, (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any statutory provision) and where the damages claimed by the claimant for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries⁴ to the claimant or any other person⁵, may not be brought after the expiration of three years from either the date on which the cause of action accrued⁶ or the date of knowledge⁷ (if later) of the person injured⁸. Where, however, the person injured dies before the expiration of that period, the period specified as respects the cause of action surviving for the benefit of the deceased's estate⁹ is three years from the date of death or the date of the personal representative's¹⁰ knowledge, whichever is the later¹¹. In certain circumstances, the court may direct that these provisions are not to apply to a claim¹².

Similar provisions apply for claims in respect of defective products where the damages include damages for personal injury, dealt with subsequently in this title¹³.

A claim for breach of contract or breach of statutory duty, which has itself resulted in the loss of a right to recover for personal injury, is not subject to the three-year period¹⁴. However, where the cause of action arises directly out of a personal injury, the three-year limitation period will apply, even though the damages are in respect of economic loss¹⁵.

The three-year limitation period will not apply where a different period of limitation is laid down by other legislation¹⁶.

1 See the Limitation Act 1980 s 11(1), (2), (3).

2 I.e. excluding any claim brought for damages under the Protection from Harassment Act 1997 s 3: see the Limitation Act 1980 s 11(1A) (added by the Protection from Harassment Act 1997 s 6). As to the meaning of 'claim' see PARA 915.

3 'Breach of duty' for these purposes includes intentional trespass to the person: *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1, overruling *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL and approving *Letang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA. It may also include breach of the term of fitness for purpose implied by statute in a contract for the sale of goods, where that breach causes personal injury: *Foster v Zott GmbH & Co KG* (24 May 2000, unreported), CA.

4 'Personal injuries' includes any disease and any impairment of a person's physical or mental condition, and 'injury' and cognate expressions must be construed accordingly: Limitation Act 1980 s 38(1). Anxiety and stress fall within this definition (*Oates v Harte Reade & Co (a firm)* [1999] 1 FLR 1221, [1999] Fam Law 383) as does the damage caused by failure to diagnose and treat dyslexia (*Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2005] 1 AC 76, [2004] 3 All ER 897, applying *Phelps v London Borough of Hillingdon, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, Re G (a minor)* [2001] 2 AC 619, [2000] 4 All ER 504, HL (where it was held that psychological damage and a failure to diagnose a congenital condition and to take appropriate action, as a result of which a child's level of achievement was reduced, may constitute damage for the purpose of a claim, and that where necessary it is permissible to regard 'personal injuries to a person' as including a failure to mitigate the adverse consequences of a congenital defect); and see *Robinson v St Helens Metropolitan Borough Council* [2002] EWCA Civ 1099, [2002] ELR 681, [2002] All ER (D) 388 (Jul)). When

damages claimed for a breach of duty consist of or include damages in respect of personal injuries, it is not necessary for the breach of duty to have physically caused personal injury in order for the three-year limitation period under s 11 to apply: *Norman v Ali*, *Norman v Aziz* [2000] RTR 107, CA.

5 'Other person' may include a foetus where the damages are claimed by the mother: see *Das v Ganju* (1998) 42 BMLR 28; affd (1999) 48 BMLR 83, [1999] Lloyd's Rep Med 198, CA.

6 Limitation Act 1980 s 11(1), (4)(a). A claim for damages in respect of an unsuccessful sterilisation operation is a claim for damages in respect of personal injury and the three-year time limit under s 11 runs from the date of conception: *Walkin v South Manchester Health Authority* [1995] 4 All ER 132, [1995] 1 WLR 1543, CA; applied in *Godfrey v Gloucestershire Royal Infirmary NHS Trust* [2003] EWHC 549 (QB), [2003] All ER (D) 346 (Mar). Special time limits for claims brought under the Fatal Accidents Act 1976 are contained in the Limitation Act 1980 s 12: see PARA 1000. A claim for damages against an employer for failing to give advice as to the benefits that an employee was entitled to on suffering personal injury in the course of his employment is a claim for negligent advice, not a claim in respect of damages for personal injury: *Gaud v Leeds Health Authority* (1999) 49 BMLR 105, CA.

7 As to the meaning of 'knowledge' see PARA 999.

8 Limitation Act 1980 s 11(1), (4)(b).

9 le by virtue of the Law Reform (Miscellaneous Provisions) Act 1934 s 1: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 814.

10 'Personal representative' includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate), but not anyone appointed only as a special personal representative in relation to settled land: Limitation Act 1980 s 11(6). As to settled land see PARA 1022. Regard must be had to any knowledge acquired by any such person while a personal representative or previously: s 11(6). If there is more than one personal representative, and their dates of knowledge are different, the date of the personal representative's knowledge is the earliest of those dates: s 11(7).

11 Limitation Act 1980 s 11(5).

12 See the Limitation Act 1980 s 33 (discretionary exclusion of time limit for claims in respect of personal injuries or death); and PARAS 1001-1002.

13 See the Limitation Act 1980 s 11A; and PARA 1003.

14 See *McGahie v Union of Shop Distributive and Allied Workers* 1966 SLT 74 (member's claim against trade union for failing to pursue his claim for personal injury); *Ackbar v CF Green & Co Ltd* [1975] QB 582, [1975] 2 All ER 65 (claim by injured passenger against insurance brokers who had failed to cover passenger liability as he had instructed); *Lefevre v White* [1990] 1 Lloyd's Rep 569 (claim against insurance brokers arising from personal injury claim against claimant); and *Gathern v Laskey* (15 October 1993, unreported).

15 *Howe v David Brown Tractors (Retail) Ltd* [1991] 4 All ER 30, CA (claim brought by employer in respect of loss of profit following personal injury to employee caused by defective machinery; three-year limitation period applicable).

16 Eg statutes implementing international transport conventions frequently contain limitation periods shorter than three years in respect of personal injury claims: see the Merchant Shipping Act 1995 (implementing the Convention Relating to the Carriage of Passengers and their Luggage by Sea (Athens, 13 December 1974; TS 40 (1987); Cm 202)) (two-year limitation period running from the date of disembarkation); *Higham v Stena Sealink Ltd* [1996] 3 All ER 660, [1996] 1 WLR 1107, CA (the two-year limitation period is not capable of extension under the Limitation Act 1980 s 33); and PARA 912. See also the Carriage by Air Act 1961 (implementing the Warsaw-Hague Convention on the Carriage of Goods by Air) (two-year limitation period); and *Sidhu v British Airways plc* [1997] AC 430, [1997] 1 All ER 193, HL (Warsaw-Hague Convention provides exclusive cause of action for passenger claiming against carrier for loss, injury or damage arising out of international carriage by air and all such claims are subject to the two-year limitation period laid down by the Convention); the Railways (Convention on International Carriage by Rail) Regulations 2005, SI 2005/2092, reg 3 (implementing the Convention Concerning International Carriage by Rail (the COTIF Convention) as modified by the Vilnius Protocol of 3 June 1999) (three years from day after accident and, for dependants of passengers, passenger's death, but no more than five years from day after accident); and PARAS 912-913.

UPDATE

998 The limitation period

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 7--See *TCD v Harrow Council* [2008] EWHC 3048 (QB), [2009] 1 FLR 719 (claimant had knowledge of facts from time of attaining majority and she had known then that it was reasonable for her to begin to investigate whether she had a claim).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iv) Personal Injury Claims/999. Claimant's knowledge.

999. Claimant's knowledge.

For the purpose of the application of the limitation period for claims involving personal injuries, the date of a person's knowledge is the date on which he first had knowledge of the following facts:

- 73 (1) that the injury in question was significant¹;
- 74 (2) that that injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty²;
- 75 (3) the identity of the defendant³; and
- 76 (4) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of a claim against the defendant⁴.

Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant⁵.

An injury is 'significant' within the meaning of head (1) above if the claimant would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment⁶. This test is external to the claimant and involves no inquiry into what he ought reasonably to have done⁷.

A person's knowledge includes knowledge which he might reasonably have been expected to acquire from (a) facts observable or ascertainable by him⁸; or (b) facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek⁹ (constructive knowledge). A person is not, however, fixed with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice¹⁰; but he may be fixed with constructive knowledge which his solicitors ought to have acquired¹¹. The injury which the claimant has suffered is to be taken into account¹². The date of a claimant's knowledge for these purposes is the date on which he first acquires knowledge of causally relevant facts essential to the cause of action; it is not the date when he first acquires the knowledge that the defendant's act or omission is actionable¹³.

Broadly corresponding provisions are made under the Limitation Act 1980 for claims in respect of defective products¹⁴.

1 Limitation Act 1980 s 14(1)(a) (s 14(1) amended by the Consumer Protection Act 1987 Sch 1 para 3). A person cannot know of the significance of his injury until he knows that he has suffered an injury: *James v East Dorset Health Authority* (1999) 59 BMLR 196, (1999) Times, 7 December, CA. See also *McCoubrey v Ministry of Defence* [2007] EWCA Civ 17, [2007] 1 WLR 1544, [2007] All ER (D) 185 (Jan) (point at which injury affected claimant's career was not the point at which knowledge of his injury occurred); *Furniss v Firth Brown Tools Ltd* [2008] EWCA Civ 182, [2008] All ER (D) 154 (Mar) (it could not be said that, as soon as a man was aware of some minor inconvenience in respect of his hearing, he had to be fixed with the knowledge that he would have acquired had he immediately taken expert advice).

2 Limitation Act 1980 s 14(1)(b) (as amended: see note 1). 'Attributable' means 'capable of being attributed': see *Wilkinson v Ancliff (BLT) Ltd* [1986] 3 All ER 427, [1986] 1 WLR 1352, CA; and *Dobbie v Medway Health Authority* [1994] 4 All ER 450, [1994] 1 WLR 1234, CA. The knowledge required to satisfy the Limitation Act 1980 s 14(1)(b) is a broad knowledge of the essence of the causally relevant act or omission to which the injury is attributable, that is to say, capable of being attributable in the sense of being a real possibility: *Spargo v*

North Essex District Health Authority [1997] 8 Med LR 125, 37 BMLR 99, CA; and see *Rowbottom v Royal Masonic Hospital* [2002] EWCA Civ 87, 65 BMLR 103, [2002] All ER (D) 148 (Feb). The claimant should know only that the act or omission of the defendant is a possible cause as opposed to a probable cause of the injury: *Guidera v NEI Projects (India)* (30 January 1990, unreported), CA, per Sir David Croom-Johnson. Knowledge of the essence of the act or omission to which the injury was attributable is required but not proof of knowledge of the terms in which it would be alleged that the act or omission of the defendant constituted negligence or breach of duty: *Nash v Eli Lilly & Co* [1993] 4 All ER 383, [1993] 1 WLR 782, CA. A claimant in a medical negligence claim has 'knowledge' within the meaning of the Limitation Act 1980 s 14 if she appreciates in general terms that her problem is capable of being attributed to an operation, even where the particular facts of what specifically went wrong are not known to her: *Hendy v Milton Keynes Health Authority* [1992] 3 Med LR 114, [1992] PIQR P281, distinguished in *Broadley v Guy Clapham & Co* [1994] 4 All ER 439, [1993] 4 Med LR 328, CA (a claimant has knowledge if he knows, or could have known with the help of medical advice reasonably obtainable, that the injury has been caused by damage resulting from an act or omission of the medical practitioner; overruling *Bentley v Bristol & Western Health Authority* [1991] 2 Med LR 359).

Where the risk created leads to an injury that, at the time, was unknown to the industry concerned, the claimant's requisite knowledge will come only when medical knowledge recognises that the injury has been caused by the activity concerned: *Heyes v Pilkington Glass Ltd* [1998] PIQR P303, CA. Where a claimant suffers injuries, some of which he knows to be attributable to the acts or omissions of the defendant which are alleged to constitute negligence, time starts to run when the claimant has knowledge that the lesser part of his injuries is so attributable, rather than when he has knowledge that the greater part of his injuries is so attributable: *Roberts v Winbow* [1998] All ER (D) 691, 49 BMLR 134, CA. See also *Rowbottom v Royal Masonic Hospital* [2002] EWCA Civ 87, (2002) 65 BMLR 103 (not until expert's second report that claimant could properly be said to have known it was defendant's omission which caused injury). Cf *Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2005] 1 AC 76, [2004] 3 All ER 897 (claimant suffering from stress and depression because of dyslexia, not addressed at school, had constructive knowledge well before three years before issue of claim form).

3 Limitation Act 1980 s 14(1)(c) (as amended: see note 1). See also *Simpson v Norwest Holst Southern Ltd* [1980] 2 All ER 471, [1980] 1 WLR 968, CA (running of time delayed where complex corporate structure of group of companies, of which the defendant company was member, resulted in delay in ascertaining the identity of the defendant); and *Leadbitter v Hodge Finance Ltd* [1982] 2 All ER 167 (police report indicating that road flooded at site of claimant's accident obtained four years after the accident: claim against highway authority not time-barred having regard to seriousness of claimant's injuries which delayed the date by which it would have been reasonable for him to obtain the police report and thereby identify the highway authority as defendant). Where an employee is injured at work and the identity of the employer is wrongly stated, the date of knowledge is deemed to be postponed to allow reasonable time for inquiries to be made about the identity of the defendant: *Cressey v E Timm & Son Ltd* [2005] EWCA Civ 763, [2005] 1 WLR 3926, [2005] All ER (D) 295 (Jun).

4 Limitation Act 1980 s 14(1)(d) (as amended: see note 1).

5 Limitation Act 1980 s 14(1) (as amended: see note 1). See also *Dobbie v Medway Health Authority* [1994] 4 All ER 450, [1994] 1 WLR 1234, CA; and see *Robinson v St Helens Metropolitan Borough Council* [2002] EWCA Civ 1099, [2002] ELR 681, [2002] All ER (D) 388 (Jul); *Rowe v Kingston-upon-Hull City Council* [2003] EWCA Civ 1281, [2003] ELR 771, [2003] All ER (D) 426 (Jul) (schools' failure to diagnose dyslexia).

6 Limitation Act 1980 s 14(2). See *Barrand v British Cellophane plc* (1995) Times, 16 February, CA; and *Crocker v British Coal Corp* (1995) 29 BMLR 159, DC. See also *Davies v British Insulated Callender's Cables Ltd* (1977) 121 Sol Jo 203 (employee suffered back injury in 1970; court found it difficult in circumstances to believe that the claimant did not know he could sue until 1976 when proceedings were commenced). In personal injury cases, if a claimant knows that his injury is attributable to the defendant's act or omission and that he has a reasonable prospect of winning a claim, the time limit will not be extended if the injury turns out to be more serious; however, time will run against the claimant who ignores a less serious (but 'significant') injury, only to bring proceedings when it becomes apparent that the injury is more serious than was initially thought, from the date of the first significant manifestation of injury: *Miller v London Electrical Manufacturing Co Ltd* [1976] 2 Lloyd's Rep 284, CA (defendants' negligence caused claimant to contract dermatitis initially, which eventually progressed to serious eczema: time ran from the date of development of dermatitis); *Brooks v J & P Coates (UK) Ltd* [1984] 1 All ER 702, [1984] ICR 158 (defendants' negligence caused claimant to suffer coughing and shortness of breath which many years later was diagnosed as byssinosis: time ran from the date of manifestation of symptoms).

7 See *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1, disapproving *KR v Bryn Alyn Community (Holdings) Ltd (in liquidation)* [2003] EWCA Civ 85, [2003] QB 1441, [2004] 2 All ER 716 (where it was suggested that the inhibiting effect of sexual abuse upon certain victims' preparedness to bring proceedings in respect of it was relevant to the test under the Limitation Act 1980 s 14(2)) and describing dicta of Geoffrey Lane LJ in *McCafferty v Metropolitan Police Receiver* [1977] 2 All ER 756 at 775, [1977] 1 WLR 1073 at 1081, CA, suggesting that the test is partly subjective and partly objective, as 'somewhat confusing'. See in particular *A v Hoare* at [43] per Lord Hoffmann ('In my opinion the subsection assumes a practical and relatively

unsophisticated approach to the question of knowledge and there seems to me to have been much sense in Lord Griffiths's observation in *Stubbings v Webb* [1993] AC 498 at 506, [1993] 1 All ER 322 at 328, HL, that he had "the greatest difficulty in accepting that a woman who knows that she has been raped does not know that she has suffered a significant injury"). See also *A v Wirral Metropolitan Borough Council* [2008] EWCA Civ 783, [2008] All ER (D) 61 (Jul), applying *A v Hoare* (sexual abuse; claimant had known at all times after it had occurred that the abuse amounted to a significant injury); *Field v British Coal Corp'n (Department for Business Enterprise and Regulatory Reform)* [2008] EWCA Civ 912, [2008] All ER (D) 417 (Jul).

8 Limitation Act 1980 s 14(3)(a). Such facts may be ascertainable through newspaper and television reports or the services of a solicitor (*Nash v Eli Lilly* [1993] 4 All ER 383, [1993] 1 WLR 782, CA), through a witness to the accident (*Napper v National Coal Board* (1 March 1990, unreported), CA), or through an official report on the accident (*Leadbitter v Hodge Finance Ltd* [1982] 2 All ER 167). Whereas the onus of establishing that the date of actual knowledge fell within the limitation period rests on the claimant, the evidential burden of proving an earlier date of constructive knowledge (see note 9) rests on the defendant: see *Nash v Eli Lilly & Co* [1993] 4 All ER 383 at 396, [1993] 1 WLR 782 at 796, CA; and *Crocker v British Coal Corp'n* (1995) 29 BMLR 159, DC. The fact that the claimant is told that a course of medical treatment has not worked will not necessarily imbue him with the knowledge that his injury was attributable to the defendant's negligent act: *Smith v West Lancashire Health Authority* (1995) 25 BMLR 34, CA.

9 Limitation Act 1980 s 14(3)(b). Knowledge under s 14(3) is termed 'constructive knowledge'. In determining whether it would have been reasonable for the claimant to seek expert advice the test to be applied is what a person of the claimant's age, background, intelligence and disabilities would reasonably have known and done: *Davis v City and Hackney Health Authority* [1991] 2 Med LR 366; *Parry v Clwyd Health Authority* [1997] PIQR P1. See also *Murphy v Milton Keynes Health Authority* (11 March 1991, unreported); *Driscoll-Varley v Parkside Health Authority* [1991] 2 Med LR 346; *Nash v Eli Lilly & Co* [1993] 4 All ER 383, [1993] 1 WLR 782, CA; *Heyes v Pilkington Glass Ltd* [1998] PIQR P303, CA; *O'Driscoll v Dudley Health Authority* [1998] Lloyd's Rep Med 210, CA; *Smith v Leicester Health Authority* [1998] Lloyd's Rep Med 77, CA; *Roberts v Winbow* [1998] All ER (D) 691, 49 BMLR 134, CA; *Smith v Havering London Borough Council* [2004] EWHC 599 (QB), [2004] All ER (D) 346 (Mar). Where the claimant is not able to seek advice in the absence of legal aid, it is reasonable for him to delay seeking such advice until authority to proceed is granted: *Khan v Ainslie* [1993] 4 Med LR 319.

Legal advice does not amount to 'appropriate expert advice' necessary for ascertaining knowledge of a fact for the purposes of the Limitation Act 1980 s 14(3)(b): see *Halford v Brookes* [1991] 3 All ER 559, [1991] 1 WLR 428, CA. A party's solicitor is not an 'expert' within the meaning of the Limitation Act 1980 s 14(3)(b) for the purposes of assisting his client in identifying a defendant: *Simpson v Norwest Holst Southern* [1980] 2 All ER 471, [1980] 1 WLR 968, CA; *Fowell v National Coal Board* (1986) Times, 28 May, CA; and see *Henderson v Temple Pier Co Ltd* [1998] 3 All ER 324, [1998] 1 WLR 1540, CA.

The burden is on the defendant to show that the claimant should have sought expert advice before he did in fact do so: see *Forbes v Wandsworth Health Authority* [1997] QB 402, [1996] 4 All ER 881, CA; and *Nash v Eli Lilly & Co*.

10 Limitation Act 1980 s 14(3). See *Davis v Ministry of Defence* (1985) Times, 7 August, [1985] LS Gaz R 3265, CA (claimant and his doctor both believed that his dermatitis resulted from conditions at his workplace, but claimant was advised by his solicitors, following medical reports and counsel's opinions, that the condition was constitutional; his claim, some ten years after the onset of generalised dermatitis, was not time-barred); *Hodges v Northampton County Council* [2004] EWCA Civ 526, [2004] 21 LS Gaz R 36, [2004] All ER (D) 315 (Apr) (claim based on post-traumatic stress disorder; judge ought to have borne in mind that symptoms might not manifest themselves for many years). See also *Hind v York Area Health Authority* [1997] 8 Med LR 377; *Forbes v Wandsworth Health Authority* [1997] QB 402, [1996] 4 All ER 881, CA; *Ali v Courtaulds Textiles Ltd* (1999) 52 BMLR 129, [1999] All ER (D) 542, CA; *James v East Dorset Health Authority* (1999) 59 BMLR 196, (1999) Times, 7 December, CA; *Snizek v Bundy (Letchworth) Ltd* [2000] All ER (D) 942, CA; *Robinson v St Helens Metropolitan Borough Council* [2002] EWCA Civ 1099, [2002] ELR 681, [2002] All ER (D) 388 (Jul); *Smith v Liverpool City Council* [2006] EWHC 743 (QB), [2006] All ER (D) 170 (Apr) (affd [2007] EWCA Civ 246, 151 Sol Jo LB 433, [2007] All ER (D) 366 (Mar)).

11 *Henderson v Temple Pier Co Ltd* [1998] 3 All ER 324, [1998] 1 WLR 1540, CA.

12 See *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1.

13 *Saxby v Morgan* [1997] 8 Med LR 293, 38 BMLR 126, CA.

14 See the Limitation Act 1980 s 14(1A) (added by the Consumer Protection Act 1987 Sch 1 para 3); and PARA 1004.

UPDATE

999 Claimant's knowledge

NOTE 2--A claimant has the requisite knowledge when he knows enough to make it reasonable for him to begin to investigate whether he has a case against the defendant: *AB v Ministry of Defence* [2009] EWHC 1225 (QB), [2009] All ER (D) 54 (Jun).

NOTE 7--See *TCD v Harrow Council* [2008] EWHC 3048 (QB), [2009] 1 FLR 719 (claimant had knowledge of facts from time of attaining majority and she had known then that it was reasonable for her to begin to investigate whether she had a claim); *Raggett v Society of Jesus Trust 1929 for Roman Catholic Purposes* [2009] EWHC 909 (QB), (2009) 108 BMLR 147 (claimant had knowledge of psychological effects of sexual abuse which occurred frequently over four-year period at school).

NOTE 8--See *Pierce v Doncaster MBC* [2008] EWCA Civ 1416, [2009] 3 FCR 572 (claimant alleging that local authority had negligently failed to take him into care as a child had constructive knowledge of facts as he had declined offer of access to case file); *Whiston v London Strategic Health Authority* [2010] EWCA Civ 195, [2010] All ER (D) 56 (Mar).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iv) Personal Injury Claims/1000. Time limit for claims under the Fatal Accidents Act 1976.

1000. Time limit for claims under the Fatal Accidents Act 1976.

A claim¹ under the Fatal Accidents Act 1976 may not be brought if the death occurred when the person injured could no longer maintain a claim and recover damages in respect of the injury², whether because of a time limit within the Limitation Act 1980 or any other Act, or for any other reason³. Where any such claim by the injured person would have been barred by the time limit for personal injury cases⁴, no account is to be taken of the possibility of the time limit being overridden by the court⁵.

A claim under the Fatal Accidents Act 1976 may not be brought after the expiration of three years from (1) the date of death; or (2) the date of knowledge of the person for whose benefit the claim is brought, whichever is the later⁶. Where there is more than one person for whose benefit a claim under the 1976 Act is brought, the provision as to the date of knowledge⁷ must be applied separately to each of them⁸, and if that has the effect that one or more of them, but not all, is time-barred, the court must direct that any person who would be so time-barred must be excluded from those for whom the claim is brought⁹, unless it is shown that if the claim were brought exclusively for the benefit of that person it would not be defeated by a defence of limitation, whether in consequence of that person being under a disability, or an agreement between the parties not to raise the defence, or otherwise¹⁰.

The court may direct that these provisions are not to apply to a claim¹¹.

1 As to the meaning of 'claim' see PARA 915.

2 In the Fatal Accidents Act 1976, 'injury' includes any disease and any impairment of a person's physical or mental condition: s 1(6) (substituted by the Administration of Justice Act 1982 s 3(1)).

3 Limitation Act 1980 s 12(1) (amended by the Consumer Protection Act 1987 Sch 1 para 2).

4 In the three-year time limit for personal injury claims pursuant to the Limitation Act 1980 s 11: see PARA 998.

5 Limitation Act 1980 s 12(1) (as amended: see note 3). The court can override a time limit pursuant to s 33: see PARAS 1001-1002.

6 Limitation Act 1980 s 12(2). As to the date of the claimant's knowledge see s 14; and PARA 999. The Limitation Act 1980 does not apply to a claim for which a period of limitation is prescribed by or under any other Act (s 39) and s 11 (see PARA 998) does not apply to a claim under the Fatal Accidents Act 1976: Limitation Act 1980 s 12(2).

A claim under the Fatal Accidents Act 1976 is one to which the following provisions of the Limitation Act 1980 apply: s 28 (extension of time in disability cases: see PARA 1171); s 33 (discretionary exclusion of time limit for claims in respect of personal injury or death: see PARA 1001 et seq); s 35 (new claims in pending proceedings; rules of court: see PARA 944); and s 39 (other limitation enactments: see PARA 918); otherwise, however, Pt II (ss 28-33) and Pt III (ss 34-39) do not apply to the claim: s 12(3).

7 In the Limitation Act 1980 s 12(2)(b).

8 Limitation Act 1980 s 13(1).

9 Limitation Act 1980 s 13(2).

10 Limitation Act 1980 s 13(3). As to persons under a disability see s 28; and PARA 1170 et seq.

11 See the Limitation Act 1980 ss 1(2), 33; and PARA 1001.

UPDATE

**1000-1004 Time limit for claims under the Fatal Accidents Act 1976 ...
Knowledge**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iv) Personal Injury Claims/1001. Court's power to override time limits.

1001. Court's power to override time limits.

If it appears to the court¹ that it would be equitable to allow a claim to proceed² having regard to the degree to which:

- 77 (1) the provisions in respect of the time limit for personal injury claims³, claims under the Fatal Accidents Act 1976⁴ or claims in respect of defective products⁵ prejudice the claimant or any person whom he represents⁶; and
- 78 (2) any decision of the court would prejudice the defendant or any person whom he represents⁷,

the court may direct that those provisions are not to apply to the claim or are not to apply to any specified cause of action to which the claim relates⁸. However, the provision which places a longstop limitation period of ten years on claims in respect of defective products involving personal injuries and thereby extinguishes the right of action⁹ cannot be disapplied by the court¹⁰.

The fact that a first claim has been commenced within the three-year time limit is no bar to the application of the court's discretion under the above provisions to a second claim commenced after the expiry of the time limit¹¹.

The factors to which the court is to have regard in exercising its discretion under the above provisions are considered below¹².

1 'The court' means the court in which the claim has been brought: Limitation Act 1980 s 33(7).

2 The question to be considered is not whether the claim itself is equitable, but whether it would be equitable to allow it to proceed: *Ward v Foss and Heathcote* (1993) Times, 29 November, CA.

3 Ie the Limitation Act 1980 s 11; and see PARA 998. References to s 11 include references to that section as extended by any provision of Pt II (ss 28-33) and Pt III (ss 37-41): s 33(8) (amended by the Consumer Protection Act 1987 Sch 1 para 6). The Limitation Act 1980 applies to claims for damages for personal injury for an intentional trespass to the person: *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1.

4 Ie the Limitation Act 1980 s 12: see PARA 1000.

5 Ie the Limitation Act 1980 s 11A: see PARA 1003. Note that the court cannot disapply s 11A(3) (extinction of right of action under the Consumer Protection Act 1987 after ten years): Limitation Act 1980 s 33(1A)(a) (added by the Consumer Protection Act 1987 Sch 1 para 6). See also the text and notes 9-10.

6 Limitation Act 1980 s 33(1)(a) (s 33(1) amended by the Consumer Protection Act 1987 Sch 1 para 6). See *Singh v Duport Harper Foundries Ltd* [1994] 2 All ER 889, [1994] 1 WLR 769, CA. Prejudice must arise from the statutory limitation period: *Young (suing as executrix of Young) v Western Power Distribution (South West) plc* [2003] EWCA Civ 1034, [2003] 1 WLR 2868, [2003] All ER (D) 328 (Jul) (claimant failed to proceed with claim issued within limitation period; any prejudice which arose resulted from claimant's own actions).

7 Limitation Act 1980 s 33(1)(b) (as amended: see note 6). The relevant prejudice to the defendant is that flowing from the decision of the court to allow the claim to proceed, rather than any prejudice caused by the delay of the claimant within the normal period of limitation: *Deeming v British Steel Corp* (1978) 123 Sol Jo 303, CA; *Deerness v John R Keeble & Son (Brantham) Ltd* [1983] 2 Lloyd's Rep 260, HL. See also *Bowden v Poor Sisters of Nazareth*, *Whitton v Poor Sisters of Nazareth* [2008] UKHL 32, 2008 SLT 561 (a decision on prejudice in the context of similar Scottish legislation (the Prescription and Limitation (Scotland) Act 1973 s 19A)).

The prejudice that may be suffered by the defendant is not to be found solely in the death or disappearance of witnesses, or their fading memories, or in the destruction of records, but may also be found in the difficulty of conducting his affairs with the prospect of a claim hanging indefinitely over his head: see *Biss v Lambeth, Southwark and Lewisham Health Authority* [1978] 2 All ER 125, [1978] 1 WLR 382, CA.

The impecuniosity of a claimant seeking leave under the Limitation Act 1980 s 33 to proceed out of time is a relevant factor since the defendant, if successful, would be unable to recover his costs: *Lye v Marks & Spencer plc* (1988) Times, 15 February, CA. See also *Thompson v Brown Construction (Ebbw Vale) Ltd* [1981] 2 All ER 296, [1981] 1 WLR 744, HL (potential claim against solicitor highly relevant factor).

When weighing the prejudice to a defendant who is insured, the defendant and insurer should be treated as a composite unit: insurers should not be penalised by being made to fight claims that their insured would not otherwise have fought: *Kelly v Bastible* [1997] 8 Med LR 15, 36 BMLR 51, CA.

8 Limitation Act 1980 s 33(1) (as amended: see note 6). The court has the discretion to disapply the limitation period where a claimant has issued proceedings within the time limit but has then issued a second claim after the limitation period had expired: *Horton v Sadler* [2006] UKHL 27, [2007] 1 AC 307, [2006] 3 All ER 1177; *Richardson v Watson* [2006] EWCA Civ 1662, (2006) Times, 13 December, [2006] All ER (D) 76 (Dec). See also *Kew v Bettamix Ltd (formerly Tarmac Roadstone Southern Ltd)* [2006] EWCA Civ 1535, [2007] PIQR P210.

For a discussion of the court's discretion under the Limitation Act 1980 s 33 see *Higham v Stena Sealink Ltd* [1996] 3 All ER 660, [1996] 1 WLR 1107, CA. As to the scope of the Limitation Act 1980 s 33 generally see *Howe v David Brown Tractors (Retail) Ltd* [1991] 4 All ER 30, CA; *Re Workvale Ltd (No 2)* [1992] 2 All ER 627, [1992] 1 WLR 416, CA; *Nash v Eli Lilly & Co* [1993] 4 All ER 383, [1993] 1 WLR 782, CA; *Liff v Peasley* [1980] 1 All ER 623, [1980] 1 WLR 781, CA (extension for purpose of joining second defendant refused as claimant had strong case against first defendant); *Chappell v Cooper* [1980] 2 All ER 463, [1980] 1 WLR 958, CA (own failure to proceed with claim, extension refused); and *Singh v Duport Harper Foundries Ltd* [1994] 2 All ER 889, [1994] 1 WLR 769, CA. The Limitation Act 1980 s 33 confers an unfettered discretion upon the court to disapply the primary three-year limitation period imposed by s 11 and the Court of Appeal will not interfere with an exercise of that discretion provided the judge has followed the required directions (as to which see PARA 1002): *Conry v Simpson* [1983] 3 All ER 369, CA; *Bradley v Hanseatic Shipping Co Ltd* [1986] 2 Lloyd's Rep 34, CA (decision must be plainly wrong or an error in the exercise of discretion); *KR v Bryn Alyn Community (Holdings) Ltd (in liquidation)* [2003] EWCA Civ 85 at [68]-[69], [2003] QB 1441 at [68]-[69], [2004] 2 All ER 716; *Burke v Ashe Construction Ltd* [2003] EWCA Civ 717, [2003] All ER (D) 353 (May); and see *Horton v Sadler*; *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1; *Fletcher v Containerbase (Manchester) Ltd* [2003] EWCA Civ 1635, [2003] All ER (D) 516 (Oct). In acting under the Limitation Act 1980 s 33, the court must have regard to all the circumstances of the case and to the factors set out in PARA 1002. See also *McGhie v British Telecommunications plc* [2005] EWCA Civ 48, [2005] All ER (D) 120 (Jan) (judge held to have applied the wrong test); *Kamar v Nightingale* [2007] EWHC 2982 (QB), [2007] All ER (D) 210 (Dec).

Upon an application by the claimant to disapply the limitation period in a claim involving personal injuries pursuant to the Limitation Act 1980 s 33, the onus is on the claimant to persuade the court to exercise its discretion in his favour; this exercise differs eg from proceedings to strike out a claim for want of prosecution, where the onus is on the defendant to prove the delay and that he has been prejudiced by it: *Barrand v British Cellophane plc* (1995) Times, 16 February, CA; *Smith v Ministry of Defence* [2005] EWHC 682 (QB), [2005] All ER (D) 254 (Apr). The court cannot disapply the Limitation Act 1980 s 12(1) (see PARA 1000), except where the reason why the person injured could no longer maintain a claim was due to the time limit in s 11 (personal injury claims: see PARA 998) or s 11A(4) (claims in respect of defective products: see PARA 1003 et seq): s 33(2) (amended by the Consumer Protection Act 1987 Sch 1 para 6). If eg the person injured could at his death no longer maintain a claim under the Fatal Accidents Act 1976 because of the time limit in the Carriage by Air Act 1961 Sch 1 Pt I art 29 (see PARAS 913, 998), the court has no power to direct that the Limitation Act 1980 s 12 is not to apply: s 33(2). A direction by the court disapplying the provisions of s 12 operates to disapply the provisions to the same effect in the Fatal Accidents Act 1976 s 1(1): Limitation Act 1980 s 33(6).

The onus is on the claimant to persuade the court to exercise its discretion on his behalf; where he has a serious allegation against the defendant, he must put it before the court at the earliest possible moment if he is to succeed in persuading the court to exclude the limitation period: *Perelman v Johnson* (19 July 1995, unreported), CA.

References in the Limitation Act 1980 s 33 to s 11 or s 11A include references to those sections as extended by any of the preceding provisions of Pt II or by any provision of Pt III: s 33(8) (amended by the Consumer Protection Act 1987 Sch 1 para 6).

9 le the Limitation Act 1980 s 11A(3).

10 Limitation Act 1980 s 33(1A)(a) (added by the Consumer Protection Act 1987 Sch 1 para 6). Where, in a claim in respect of defective products, the damages claimed are confined to damages for loss of or damage to any property, the court cannot disapply the time limits set pursuant to the Limitation Act 1980 s 11A: s 33(1A)(b) (as so added); and see PARA 1003.

11 *Horton v Sadler* [2006] UKHL 27, [2007] 1 AC 307, [2006] 3 All ER 1177; applied in *Richardson v Watson* [2006] EWCA Civ 1662, (2006) Times, 13 December, [2006] All ER (D) 76 (Dec).

12 See PARA 1002. As to the possible effect of the decision in *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1 on the exercise of the discretion under the Limitation Act 1980 s 33 see the observations of Lord Brown of Eaton-under-Heywood at [84]-[89].

UPDATE

1000-1004 Time limit for claims under the Fatal Accidents Act 1976 ... Knowledge

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1001 Court's power to override time limits

NOTE 8--See also *AB v Ministry of Defence* [2009] EWHC 1225 (QB), [2009] All ER (D) 54 (Jun).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(iv) Personal Injury Claims/1002. Factors to which court must have regard.

1002. Factors to which court must have regard.

In considering whether or not to exclude the time limit for claims in respect of personal injuries or death and to permit a claim to proceed¹, the court must have regard to all the circumstances of the case² and in particular to:

- 79 (1) the length of, and the reasons for, the delay on the claimant's part³;
- 80 (2) the extent to which, having regard to the delay⁴, the evidence adduced or likely to be adduced by the claimant or the defendant is or is likely to be less cogent than if the claim had been brought within the time allowed⁵;
- 81 (3) the conduct of the defendant after the cause of action arose, including the extent, if any, to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the claimant's cause of action against the defendant⁶;
- 82 (4) the duration of any disability of the claimant arising after the date of the accrual of the cause of action⁷;
- 83 (5) the extent to which the claimant acted promptly and reasonably once he knew whether or not the defendant's act or omission, to which the injury was attributable, might be capable at that time of giving rise to a claim for damages⁸; and
- 84 (6) the steps, if any, taken by the claimant to obtain medical, legal or other expert advice and the nature of any such advice he may have received⁹.

In medical negligence claims the court can make allowance for the difficulties involved in obtaining expert evidence¹⁰. In sexual abuse cases, the inhibiting effect of sexual abuse upon certain victims' preparedness to bring proceedings in respect of it ought to be considered¹¹. The conduct of the claimant is also relevant¹².

In deciding whether to exercise its discretion under the above provisions, the court ought to take into account its power to restrict the award of interest¹³ to part of the period between the date when the cause of action arose and the date of judgment¹⁴.

The court must have regard to the degree to which the claimant is prejudiced by being prevented by the operation of the time limit from starting his claim after the expiry of the primary limitation period and the degree to which the defendant would be prejudiced by allowing the claim to be started after the expiry of the primary limitation period¹⁵.

The fact that the claimant would have an unanswerable claim against his solicitors for negligence if the claim were not allowed to proceed does not automatically preclude leave being given for the claim to proceed; the court retains a discretion in these circumstances¹⁶.

Where the injured person died when, because of the time limit¹⁷, he could no longer maintain a claim and recover damages in respect of the injury, the court must have regard in particular to the length of, and reasons for, the delay on the deceased's part¹⁸.

1 le under the Limitation Act 1980 s 33(1): see PARA 1001.

2 Limitation Act 1980 s 33(3) (s 33(3) amended by the Consumer Protection Act 1987 Sch 1 para 6). These may include factors which have subconsciously prevented the defendant from litigating: *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1; and see *McCafferty v Metropolitan Police District Receiver* [1977] 2 All ER

756, [1977] 1 WLR 1073, CA. The court has refused to lay down a guideline that, in the absence of fault by the defendant, the limitation period ought to be enforced against the claimant unless the delay has been minimal, on the basis that such a guideline would lead to extra litigation upon what constituted minimal delay: see *Ramsden v Lee* [1992] 2 All ER 204, CA.

3 Limitation Act 1980 s 33(3)(a). The court is required to undertake a subjective inquiry to determine the reasons why the particular claimant failed to institute proceedings in time: *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1; *Coad v Cornwall Health Authority* [1997] 1 WLR 189, CA; and see *Halford v Brookes* [1991] 3 All ER 559, [1991] 1 WLR 428, CA. As to the factors relevant generally in such an inquiry see *Halford v Brookes* (claimant, reasonably, did not realise that a civil claim could be brought in respect of the murder of her daughter); *Coad v Cornwall Health Authority* (claimant received no legal advice and did not believe that she could bring a claim if she still remained capable of working). See also *Hartley v Birmingham City District Council* [1992] 2 All ER 213, [1992] 1 WLR 968, CA (writ issued one day late; application of limitation period would have provided defendants with windfall defence; trial judge wrong to disregard the 'windfall concept'); *Miller v London Electrical Manufacturing Co Ltd* [1976] 2 Lloyd's Rep 284, CA (in the circumstances a reasonable man would have realised that he had a worthwhile cause of action within the three-year period, so no extension); *Firman v Ellis* [1978] QB 886, [1978] 2 All ER 851, CA (claimant caused his solicitor to issue writ in time but it was not served for three years; held that the solicitor's negligence did not prevent the court allowing the claim to proceed); *Horton v Sadler* [2006] UKHL 27, [2007] 1 AC 307, [2006] 3 All ER 1177 (claimant issued proceedings against first defendant within the primary limitation period, but his solicitors failed to give notice to the Motor Insurers' Bureau; claimant issued new proceedings outside the period and gave the necessary notice to the Motor Insurers' Bureau, which was joined as a party to the second claim; *Walkley v Precision Forgings Ltd* [1979] 2 All ER 548, [1979] 1 WLR 606, HL not followed and extension of time allowed; cf *Williams v Johnstone* [2008] All ER (D) 32 (May)); *Shapland v Palmer* [1999] 3 All ER 50, [1999] 1 WLR 2068, CA (discretion exercised in favour of claimant issuing proceedings in a personal injury claim against different defendant even though she had issued similar proceedings in respect of the same injuries against another defendant within the primary limitation period); *Das v Ganju* (1999) 48 BMLR 83, [1999] Lloyd's Rep Med 198, CA (delay caused by misleading legal advice did not prevent claim being brought); *Corbin v Penfold Metallising Co Ltd* [2000] Lloyd's Rep Med 247, [2000] All ER (D) 2060, CA (delay caused by solicitor error did not preclude claim being brought out of time); *Adam v Ali* [2006] EWCA Civ 91, [2006] 1 WLR 1330, [2006] All ER (D) 276 (Feb) (claim could proceed notwithstanding that second set of proceedings issued); *Young (suing as executrix of Young) v Western Power Distribution (South West) plc* [2003] EWCA Civ 1034, [2003] 1 WLR 2868, [2003] All ER (D) 328 (Jul); and see *A v H* [2008] EWHC 1573 (QB), [2008] All ER (D) 95 (Jul) (defendant convicted of serious sexual assault on claimant and sentence to life imprisonment; while on day release he won £7m on the National Lottery; claimant learned of defendant's release from prison as a result of publicity afforded to his lottery win and commenced civil proceedings against him for damages for assault and battery resulting in psychiatric injury; delay of 16 years and 10 months between assault and commencement of proceedings; held that in the exceptional circumstances of the case, and since the principal reason for the claimant's delay was the defendant's impecuniosity prior to his lottery win, which meant that he was simply not worth pursuing in a claim for damages, the discretion under the Limitation Act 1980 s 33 would be exercised in the claimant's favour). Under the Civil Procedure Rules (the 'CPR'), proceedings are no longer commenced by writ, as in *Hartley v Birmingham City District Council* and *Firman v Ellis*, but by the issue of a claim form: see PARA 929.

The relevant delay to be considered by the court is the delay after the expiry of the limitation period, rather than the delay from the accrual of the cause of action: see *Thompson v Brown Construction (Ebbw Vale) Ltd* [1981] 2 All ER 296, [1981] 1 WLR 744, HL; *Donovan v Gwenttoys Ltd* [1990] 1 All ER 1018, [1990] 1 WLR 472, HL; and *Ramsden v Lee* [1992] 2 All ER 204, CA. However, delay from the accrual of the cause of action will be relevant in weighing the degree of prejudice suffered by the defendant: *Donovan v Gwenttoys Ltd* (claim not notified to defendant until five years after accident; writ issued late; claim not permitted to proceed), distinguishing *Thompson v Brown Construction (Ebbw Vale) Ltd* (claim notified a few weeks after accident, but writ issued 37 days late; claim permitted to proceed).

The court may take into account a claimant's ignorance of legal rights when considering the reasons for delay in bringing a claim: see *Halford v Brookes*. See further *Chappell v Cooper* [1980] 2 All ER 463, [1980] 1 WLR 958, CA; *Deerness v John R Keeble & Son (Brantham)* [1983] 2 Lloyd's Rep 260, HL; *Singh v Duport Harper Foundries Ltd* [1994] 2 All ER 889, [1994] 1 WLR 769, CA; and *Barrand v British Cellophane plc* (1995) Times, 16 February, CA.

4 The relevant delay is that following the expiry of the limitation period: *Donovan v Gwenttoys Ltd* [1990] 1 All ER 1018, [1990] 1 WLR 472, HL; and see note 3.

5 Limitation Act 1980 s 33(3)(b) (as amended: see note 2). See *Napper v National Coal Board* (1 March 1990, unreported), CA (writ issued more than 30 years after death of claimant's father; some witnesses had died, others would have great difficulty in recalling what had happened: claimant's application dismissed); cf *Leeson v Marsden* [2008] EWHC 1011 (QB), [2008] All ER (D) 147 (May) (new proceedings issued in 2006 in respect of medical treatment in 2000; claim form in first set of proceedings served out of time in March 2004; each defendant could not be said to be in a worse position evidentially than in 2004 when they had been ready and able to meet the claim on its merits and a fair trial was still possible). Proceedings are no longer commenced by writ, as in *Napper v National Coal Board*: see note 3. The 'cogency' within the Limitation Act 1980 s 33(3)(b) is

directed to the degree to which either party is prejudiced in the presentation of the claim or defence because the evidence is no longer available or has been adversely affected by the passage of time; there is no room in the provisions of s 33(3)(b) for the concept that a lack of cogency in the claimant's case could inure to the benefit of the claimant and thereby prejudice the defendant: see *Nash v Eli Lilly & Co* [1993] 4 All ER 383, [1993] 1 WLR 782, CA; and *Conry v Simpson* [1983] 3 All ER 369, CA.

6 Limitation Act 1980 s 33(3)(c). Section 33(3)(c) is concerned with purely procedural matters, where the forensic tactics of a defendant may lead to delay; conduct of the defendant which is totally unconnected with the conduct of the litigation will not be taken into account: *Halford v Brookes* [1991] 3 All ER 559, [1991] 1 WLR 428, CA. See also *Marshall v Martin* (10 June 1987, unreported), CA (making of interim payment led claimant to believe liability would not be contested); and *Marston v British Railways Board* [1976] ICR 124 (genuine mistake as to fact by defendants led claimant to believe he had no cause of action; writ issued 13 years after accident; claim permitted to proceed); *Hammond v West Lancashire Health Authority* [1998] Lloyd's Rep Med 146, CA (conduct of defendant health authority in destroying patients' X-ray records after three years, even where the patient's medical notes were requested in a letter before action, taken into account in allowing extension of limitation period).

7 Limitation Act 1980 s 33(3)(d). 'Disability' means a legal disability as defined in s 38(2) (see PARA 1170); see *Yates v Thakeham Tiles Ltd* [1995] PIQR P135, CA (meaning of 'disability' not to be construed as physical disability); *Thomas v Plaistow* [1997] PIQR P540, [1997] LS Gaz R 25, CA; *Pilmore v Northern Trawlers Ltd* [1986] 1 Lloyd's Rep 552.

8 Limitation Act 1980 s 33(3)(e). See *Firman v Ellis* [1978] QB 886, [1978] 2 All ER 851, CA. The fact that legal advice has been obtained and has indicated the probable outcome of the claim may help the court in deciding whether the claimant acted promptly and reasonably: see *Jones v GD Searle & Co Ltd* [1978] 3 All ER 654, [1979] 1 WLR 101, CA; and *Halford v Brookes* [1991] 3 All ER 559, [1991] 1 WLR 428, CA.

9 Limitation Act 1980 s 33(3)(f). 'Advice' may include advice from a trade union representative: see *Re Pickles v National Coal Board* [1968] 2 All ER 598, [1968] 1 WLR 997, CA.

The fact that the claimant was advised that his claim would fail will not necessarily prevent the limitation period from running if he could reasonably have acquired the necessary knowledge within the limitation period: *Farmer v National Coal Board* (1985) Times, April 27, CA.

Note a party's solicitor is not an 'expert' within the meaning of the Limitation Act 1980 s 14(3)(b) (see PARA 999) for the purposes of assisting his client in identifying a defendant: *Simpson v Norwest Holst Southern Ltd* [1980] 2 All ER 471, [1980] 1 WLR 968, CA; *Fowell v National Coal Board* (1986) Times, May 28, CA.

10 See *Gascoine v Haringey Health Authority* [1992] 3 Med LR 291 at 300, CA, per Woolf LJ.

11 *A v Hoare* [2008] UKHL 6, [2008] AC 844, [2008] 2 All ER 1. The Limitation Act 1980 s 33, and not s 14(2) (see PARA 999) is the appropriate provision under which to consider such matters: *A v Hoare*.

12 *Long v Tolchard and Sons Ltd* [2001] PIQR P18, CA (claimant failed to give truthful and accurate history of injury).

13 Ie under the Supreme Court Act 1981 s 35A: see **DAMAGES** vol 12(1) (Reissue) PARA 848. As from a day to be appointed under the Constitutional Reform Act 2005 s 148(1), the Supreme Court Act 1981 is retitled the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1 (not yet in force).

14 *Smith v Leicester Health Authority* [1998] Lloyd's Rep Med 77, CA.

15 *Walkley v Precision Forgings Ltd* [1979] 2 All ER 548 at 559, [1979] 1 WLR 606 at 618, HL, per Lord Diplock. The fact that any financial detriment sustained by the defendant is likely to be substantially greater if the claim is allowed to proceed out of time than it would have been had the claim been brought within the normal limitation period is a relevant factor, but not of such significance that it would in itself justify a claim being struck out: *Theodorou v Islington Health Authority* (1995) 26 BMLR 1, CA. See also *Hayward v Sharrard* (1998) 56 BMLR 155, CA. The court ought not to take into consideration the fact that the delay in bringing proceedings has caused the potential cost to the defendant to increase, because of changes in insurance arrangements, without balancing that fact against the financial loss to the claimant if the claim is not allowed to proceed: *Smith v Leicester Health Authority* [1998] Lloyd's Rep Med 77, CA.

16 *Thompson v Brown Construction (Ebbw Vale) Ltd* [1981] 2 All ER 296, [1981] 1 WLR 744, HL (applied in *Steeds v Peverel Management Services Ltd* [2001] EWCA Civ 419, (2001) Times, 16 May, [2001] All ER (D) 370 (Mar)); *Ramsden v Lee* [1992] 2 All ER 204, CA. However, the availability of a claim against the solicitor may be a strong factor in the exercise of the discretion: *Firman v Ellis* [1978] QB 886, [1978] 2 All ER 851, CA. Further, the court should not weigh the non-availability of such a claim against the fact that the defendant is insured so as to make a defendant fight a claim which he would not have to fight if he were not insured: *Kelly v Bastible* [1997] 8 Med LR 15, 36 BMLR 51, CA.

As to the quantum of damages which may be awarded against a solicitor whose negligence has resulted in the claimant losing the chance to bring his claim within the limitation period see *Kitchen v Royal Air Force Association* [1958] 2 All ER 241 at 250-251, [1958] 1 WLR 563 at 574-575, CA; *Allied Maples Group Ltd v Simmons & Simmons* [1995] 4 All ER 907, [1995] 1 WLR 1602, CA; and **DAMAGES**.

17 le under the Limitation Act 1980 s 11: see PARA 998.

18 Limitation Act 1980 s 33(4) (amended by the Consumer Protection Act 1987 Sch 1 para 6). In such a case or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the claimant, the Limitation Act 1980 s 33(3) has effect with appropriate modifications, and has effect in particular as if references to the claimant included references to any person whose date of knowledge is or was relevant in determining a time limit: s 33(5).

UPDATE

1000-1004 Time limit for claims under the Fatal Accidents Act 1976 ... Knowledge

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1002 Factors to which court must have regard

NOTE 3--It must be asked whether it is fair and just in all circumstances to expect the defendant to meet the claim on merits, notwithstanding delay in commencing proceedings: *Cain v Francis*; *McKay v Hamrani* [2008] EWCA Civ 1451, [2009] QB 754, [2009] 2 All ER 579.

NOTE 11--See also *B v Nugent Care Society*; *R v Wirral MBC* [2009] EWCA Civ 827, [2010] 1 WLR 516, [2009] All ER (D) 308 (Jul).

NOTE 13--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(v) Claims in respect of Defective Products/1003. The general limitation period.

(v) Claims in respect of Defective Products

1003. The general limitation period.

The Consumer Protection Act 1987¹ was implemented to render individuals involved in the manufacture and supply of manufactured products strictly liable for defects causing personal injury to a consumer and shifted the burden of proof in other cases of product liability. Special provision is made within the Limitation Act 1980 in relation to limitation periods for claims in respect of defective products brought under the 1987 Act².

A claim in respect of defective products cannot be brought after the expiration of the period of ten years from the relevant time³ and a right of action is extinguished, whether or not that right of action had accrued, or time had begun to run under the provisions of the Limitation Act 1980, at the end of the period of ten years ('the longstop')⁴.

A claim in respect of defective products in which the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant or any other person, or loss or damage to any property, cannot be brought after the expiration of the period of three years from whichever is the later of:

- 85 (1) the date on which the cause of action accrued⁵; and
- 86 (2) the date of knowledge⁶ of the injured person or, in the case of loss of or damage to property, the date of knowledge of the claimant or (if earlier) of any person in whom his cause of action was previously vested⁷.

However if, in a case where the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant or any other person, the injured person died before the expiration of the three-year period set out in heads (1) and (2) above, and a claim surviving for the benefit of the deceased's estate is brought under the Law Reform (Miscellaneous Provisions) Act 1934⁸, then for that period there is substituted a limitation period of three years from whichever is the later of (a) the date of death; and (b) the date of the personal representative's⁹ knowledge¹⁰.

In cases in respect of defective products which consist of a claim for personal injuries, special provision is made to disapply the time limits mentioned above¹¹. However, a court cannot direct that the 'longstop' time limit of ten years described above can be disapplied¹².

1 The Consumer Protection Act 1987 Pt 1 (ss 1-9) implemented EEC Council Directive 85/374 (OJ L210, 7.8.85, p 29) (the Product Liability Directive).

2 See the Limitation Act 1980 s 11A (added by the Consumer Protection Act 1987 Sch 1 para 1). This provision applies to any claim for damages by virtue of any provision of the Consumer Protection Act 1987 Pt 1 (ss 1-9): Limitation Act 1980 s 11A(1) (as so added). As to the meaning of 'defective' see the Consumer Protection Act 1987 s 3. See further **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 518 et seq; and see also *O'Byrne (by his mother and litigation friend) v Aventis Pasteur SA* [2008] UKHL 34, 102 BMLR 159, [2008] All ER (D) 123 (Jun).

None of the time limits given in the preceding provisions of the Limitation Act 1980 apply to a claim to which s 11A (defective products) applies: s 11A(2) (as so added).

Expressions used in s 11A or s 14 and in the Consumer Protection Act 1987 Pt 1 have the same meanings; and the Consumer Protection Act 1987 s 1(1) applies for the purpose of construing the Limitation Act 1980 s 11A

and the following provisions of the 1980 Act so far as they relate to a claim by virtue of any provision of the 1987 Act as it applies for the purpose of construing the 1987 Act: Limitation Act 1980 s 11A(8) (as so added).

3 The 'relevant time' means: (1) if the person proceeded against is (a) the producer of the product; (b) any person who by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; or (c) any person who has imported the product into a member state from a place outside the member states in order, in the course of any business of his, to supply it to another, the time when he supplied the product to another; and (2) in any other case, the time when the product was last supplied by one of the persons described in head (1)(a)-(c) above: Consumer Protection Act 1987 s 4(2).

4 Limitation Act 1980 s 11A(3) (as added: see note 2).

5 As to the date on which the cause of action accrued see PARA 920 et seq.

6 See PARA 1004.

7 Limitation Act 1980 s 11A(4) (as added: see note 2).

8 le under the Law Reform (Miscellaneous Provisions) Act 1934 s 1: see generally **TORT** vol 97 (2010) PARA 678 et seq.

9 For these purposes, 'personal representative' includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land: Limitation Act 1980 s 11A(6) (as added: see note 2). As to the restriction on the creation of settlements and entailed interests in land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

If there is more than one personal representative and their dates of knowledge are different, it is the earliest date of knowledge of the two that is relevant for calculating the limitation period: Limitation Act 1980 s 11A(7) (as so added).

10 Limitation Act 1980 s 11A(5) (as added: see note 2).

11 See the Limitation Act 1980 s 33; and PARAS 1001-1002.

12 See the Limitation Act 1980 s 33(1A)(a) (added by the Consumer Protection Act 1987 Sch 1 para 6).

UPDATE

1000-1004 Time limit for claims under the Fatal Accidents Act 1976 ... Knowledge

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1003 The general limitation period

NOTE 2--See Case C-358/08 *Aventis Pasteur SA v OB* [2010] All ER (EC) 522, ECJ.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(v) Claims in respect of Defective Products/1004. Knowledge.

1004. Knowledge.

References to a person's date of knowledge, in connection with limitation periods for claims in respect of defective products, are references to the date on which he first had knowledge of the following facts:

- 87 (1) such facts about the damage caused by the defect as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment; and
- 88 (2) that the damage was wholly or partly attributable to the facts and circumstances alleged to constitute the defect; and
- 89 (3) the identity of the defendant¹.

In determining the date on which a person first had such knowledge, both (a) the extent (if any) of that person's knowledge on any date of whether particular facts or circumstances would or would not, as a matter of law, constitute a defect; and (b) in a case relating to loss of or damage to property, any knowledge which that person had on a date on which he had no right of action under the Consumer Protection Act 1987, are disregarded².

A person's knowledge includes knowledge which he might reasonably have been expected to acquire from facts observable or ascertainable by him, or from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek, but a person is not fixed with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice³.

1 Limitation Act 1980 s 14(1A) (added by the Consumer Protection Act 1987 Sch 1 para 3).

2 Limitation Act 1980 s 14(1A) (as added: see note 1).

3 Limitation Act 1980 s 14(3); and see PARA 999. These provisions are broadly similar to those applicable for claims in respect of personal injuries: see PARAS 998-1002.

UPDATE

1000-1004 Time limit for claims under the Fatal Accidents Act 1976 ... Knowledge

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(vi) Sums Recoverable by Statute/1005. Time limit for claims for sums recoverable by statute.

(vi) Sums Recoverable by Statute

1005. Time limit for claims for sums recoverable by statute.

A claim to recover any sum recoverable by virtue of any enactment¹ cannot be brought after the expiration of six years from the date on which the cause of action accrued². This limitation period does not affect any proceedings for claiming contribution³.

1 Certain sums are declared by statute to be specialty debts (falling within the Limitation Act 1980 s 8: see PARA 975 et seq) (see eg the Insolvency Act 1986 s 80; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 718) or simple contract debts (falling within the Limitation Act 1980 s 5: see PARA 955 et seq) (see eg the Land Registration Act 2002 Sch 8 para 8(a); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 983). In the absence of such special provision to the contrary, the period prescribed by the Limitation Act 1980 s 9(1) applies to the exclusion of the 12-year period laid down for claims upon specialties (s 8: see PARA 975 et seq), even though the claim is technically upon a statute and therefore upon a specialty: see *Central Electricity Board v Halifax Corpn* [1963] AC 785, [1962] 3 All ER 915, HL; and PARA 975. See also *Rowan Companies Inc v Lambert Eggink Offshore Transport Consultants VOF (No 2)* [1999] 2 Lloyd's Rep 443, [1999] All ER (D) 703; and see *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668 (limitation period in respect of sums due by way of repayment of capital to shareholders under a scheme of arrangement is six years, on the basis that it is either a claim to recover a sum recoverable by virtue of an enactment or a claim founded on simple contract). An application for the return of sums of money paid under an extortionate credit bargain is subject to the six-year limit under the Limitation Act 1980 s 9(1), as a claim for the recovery of money under what is now the Consumer Credit Act 1974 s 140B; by contrast, an application to be released from making further payments is a claim upon a specialty and subject to the 12-year period under the Limitation Act 1980 s 8: *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496, [2000] All ER (D) 1016, CA. Applications to set aside transactions under the Insolvency Act 1986 are normally subject to the 12-year, not the six-year, period: see *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144; *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542, [2007] 1 All ER 1106, [2007] 1 WLR 2404. A claim against a company director in respect of wrongful trading has, however, been held to fall within the six-year period: *Re Farmizer (Products) Ltd, Moore v Gadd* [1997] 1 BCLC 589, [1997] BCC 655, CA.

2 Limitation Act 1980 s 9(1). As to the date on which the cause of action accrued see *Pegler v Railway Executive* [1948] AC 332, [1948] 1 All ER 559, HL (worsening condition of employee on amalgamation of railway companies; date when cause of arbitration under statutory compensation provision accrued); *China v Harrow UDC* [1954] 1 QB 178, [1953] 2 All ER 1296; *West Riding of Yorkshire County Council v Huddersfield Corpn* [1957] 1 QB 540, [1957] 1 All ER 669; *Central Electricity Generating Board v Halifax Corpn* [1963] AC 785, [1962] 3 All ER 915, HL (date on which claim to funds of electricity undertaking transferred to electricity board on nationalisation accrued); *Halstead v Manchester City Council* [1998] 1 All ER 33, 96 LGR 711, CA (statutory right to recover interest under the Compulsory Purchase Act 1965 s 11(1) does not arise until the amount on which interest becomes payable is awarded or agreed); *Hillingdon London Borough Council v ARC Ltd* [1999] Ch 139, [1999] LGR 282, CA (by contrast, right to compensation which arises as at the date of entry of the acquiring authority is an immediate right which, in the absence of agreement, can only be enforced at the suit of the claimant by initiating proceedings to quantify the sums due; the right or cause of action which arises on entry by the authority may properly be characterised as a right to be paid such compensation as may be agreed or assessed by the Lands Tribunal); *Regentford v Thanet District Council* [2004] EWHC 246 (Admin), (2004) Times, 4 March, [2004] All ER (D) 285 (Feb) (right to sue on assessment of liability to council tax accrues on the date of assessment); *R (on the application of Sutherland) v Secretary of State for Work and Pensions* [2004] EWHC 800 (Admin), [2004] All ER (D) 492 (Mar) (similar principle applies in the case of child support); *Legal Services Commission v Rasool* [2008] EWCA Civ 154, [2008] 3 All ER 381, (2008) Times, 21 April (cause of action under the Civil Legal Aid (General) Regulations 1989, SI 1989/339, reg 86 (right to recover costs) (revoked) accrued on date of revocation of legal aid certificate). See also PARA 920.

3 Limitation Act 1980 s 9(2). As to the limitation period in cases of contribution see s 10; and PARAS 1006-1007.

UPDATE

1005 Time limit for claims for sums recoverable by statute

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(vii) Contribution/1006. Time limit for claiming contribution.

(vii) Contribution

1006. Time limit for claiming contribution.

Where any person becomes entitled to a right to recover contribution in respect of any damage from any other person¹, no claim² to recover contribution by virtue of that right may be brought after the end of the period of two years from the date on which that right accrued³. The period of limitation may be extended in cases of disability, fraud, concealment and mistake⁴. It does not apply where the relevant obligation creates a debt⁵.

Even though time may not have run against the claim for contribution as between tortfeasors, the claim for contribution cannot succeed if the tortfeasor against whom contribution is sought has ceased to be liable by virtue of the expiry of a period of limitation which extinguished the right on which the claim against him in respect of the damage was based⁶.

1 Ie under the Civil Liability (Contribution) Act 1978 s 1: see **TORT** vol 97 (2010) PARA 450.

2 'Claim' includes an arbitration: see the Arbitration Act 1996 s 13(1).

3 Limitation Act 1980 s 10(1). As to when the right accrues see PARA 1007.

4 See the Limitation Act 1980 s 10(5) (applying ss 28, 32, 35 to proceedings for contribution, as to which see PARAS 1171, 1220 et seq). The reference to ss 28(1), 32 includes those provisions as applied to arbitrations by the Arbitration Act 1996 s 13(1); and s 14 (see PARA 917) applies for that purpose: Limitation Act 1980 s 10(5).

5 *Hampton v Minns* [2002] 1 All ER (Comm) 481, [2002] 1 WLR 1.

6 See the Civil Liability (Contribution) Act 1978 s 1(3); and *George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169, [1954] 3 All ER 661, HL.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(vii) Contribution/1007. When right to contribution accrues.

1007. When right to contribution accrues.

If a person is held liable in respect of any damage by a judgment given in any civil proceedings, or an award made on any arbitration, the date on which a right to recover contribution in respect of that damage accrues is the date on which the judgment is given, or the date of the award, as the case may be¹. If, in a case not falling within the above provision, a person makes or agrees to make any payment to one or more persons in compensation for any damage (whether he admits any liability in respect of the damage or not), the date on which a right to recover contribution in respect of that damage accrues is the earliest date on which the amount to be paid by him is agreed between him (or his representatives) and the person (or each of the persons, as the case may be) to whom the payment² is to be made³.

For this purpose, a claim by way of set-off or counterclaim is deemed to be a new claim and to have been commenced on the same date as the claim in which the set-off or counterclaim is pleaded⁴.

No account may be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the person entitled to recover contribution⁵.

1 Limitation Act 1980 s 10(2), (3). As to the running of the limitation period where main contractors who are liable in an arbitration to building owners are seeking relief under an indemnity clause from subcontractors see *County and District Properties Ltd v C Jenner & Son Ltd* [1976] 2 Lloyd's Rep 728, DC. See also *R & H Green Ltd & Silley Weir v British Railways Board* [1985] 1 All ER 237, [1985] 1 WLR 570n. The limitation period runs from the date of the assessment of damages rather than the date of the judgment on liability: *Aer Lingus plc v Gildacraft Ltd* [2006] EWCA Civ 4, [2006] 2 All ER 290, [2006] 1 WLR 1173.

2 For these purposes, 'payment' includes a payment in kind, at any rate where the payment in kind is capable of valuation in monetary terms: *Baker & Davies plc v Leslie Wilks Associates* [2005] EWHC 1179 (TCC), [2005] 3 All ER 603, 101 ConLR 82.

3 Limitation Act 1980 s 10(4). See *Knight v Rochdale Healthcare NHS Trust* [2003] EWHC 1831 (QB), [2003] 4 All ER 416, [2004] 1 WLR 371 (limitation period ran from date of firm agreement and not from date of consent order). These provisions apply to proceedings by or against the Crown as they apply to proceedings between subjects: see s 37. As to proceedings by or against the Crown generally see PARA 903.

4 Limitation Act 1980 s 35(1), (2). As to set-off and counterclaim generally see PARA 944.

5 Limitation Act 1980 s 10(3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(viii) Account/1008. Period of limitation and accrual of cause of action.

(viii) Account

1008. Period of limitation and accrual of cause of action.

A claim¹ for an account² may not be brought after the expiration of any time limit under the Limitation Act 1980 which is applicable to the claim which is the basis of the duty to account³. This is subject to the provisions relating to the effect of disability, acknowledgment, part payment, fraud, concealment and mistake⁴. It does not apply to certain claims by beneficiaries as regards which the prescribed periods of limitation are expressly excluded⁵.

1 As to the meaning of 'claim' see PARA 915.

2 It is primarily the equitable remedy of account which must be referred to since the common law claim of account is obsolete: see *Tito v Waddell (No 2)* [1977] Ch 106 at 250, [1977] 3 All ER 129 at 248 per Megarry V-C; and **EQUITY** vol 16(2) (Reissue) PARA 450.

3 Limitation Act 1980 s 23.

4 Limitation Act 1980 s 1(2). As to the provisions in question see PARA 1168 et seq.

5 See the Limitation Act 1980 s 21; and PARA 1140 et seq. See also *DEG-Deutsche Investitions und Entwicklungsgesellschaft mbH v Koshy, Gwembe Valley Development Co Ltd v Koshy (No 3)* [2003] EWCA Civ 1048, [2004] 1 BCLC 131, [2003] All ER (D) 465 (Jul), cited in PARA 1146.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(viii) Account/1009. Partners.

1009. Partners.

In claims for an account¹ between partners, the statute of limitation does not run until the partnership is determined². In claims for an account between a surviving partner and the personal representative of a deceased partner, time runs from the death of the partner, and the right of action is barred at the expiration of the appropriate number of years from the death³. If, however, a partnership is determined by death and the surviving partners carry on the new partnership without taking the accounts of the old and without interruption or settlement, the statute has no application as between the surviving partners and the representatives of the deceased partner⁴. If one partner unlawfully excludes another from the management or control of the partnership property, time begins to run against a claim based on the exclusion from the act of exclusion⁵.

1 As to the meaning of 'account' see PARA 1008 note 2.

2 *Noyes v Crawley* (1878) 10 ChD 31; *Knox v Gye* (1872) LR 5 HL 656 at 674; *Miller v Miller* (1869) LR 8 Eq 499; *Millington v Holland* (1869) 18 WR 184; *The Pongola* (1895) 73 LT 512; and see PARA 920. If an asset falls in after dissolution of the partnership and a claim for an account is barred, a claim to recover a share in that asset is also barred: *Gopala Chetty v Vijayaraghavachariar* [1922] 1 AC 488, PC; and see *Marshall v Bullock* (27 March 1998, unreported), CA.

3 *Knox v Gye* (1872) LR 5 HL 656.

4 *Betjemann v Betjemann* [1895] 2 Ch 474, CA.

5 *Barton v North Staffordshire Rly Co* (1888) 38 ChD 458 at 463; *Clegg v Edmondson* (1857) 8 De GM & G 787. This is also the case in the analogous claim by a shareholder against a company for refusal to register him as a shareholder: see PARA 920 note 13; and **COMPANIES** vol 14 (2009) PARA 431.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ix)
Judgments/1010. Limitation periods.

(ix) Judgments

1010. Limitation periods.

A claim¹ may not be brought on any judgment after the expiration of six years from the date on which the judgment became enforceable², and no arrears of interest in respect of any judgment debt can be recovered after the expiration of six years from the date on which the interest became due³. It is not an abuse of process for a bank, as judgment creditor of a defendant under an existing judgment, to pursue a second claim based on the first judgment in order to obtain and enforce a second judgment against the defendant by proceedings of a different sort, for example, bankruptcy proceedings, brought within the six-year period⁴.

1 Despite the wide definition of 'action' (now known as a 'claim') contained in the Limitation Act 1980 s 38(1) (see PARA 915), a claim upon a judgment applies only to the enforcement of judgments by suing on them and does not apply to the issue of executions upon judgments for which the leave of the court is required, after six years have elapsed, by CPR Sch 1 RSC Ord 46 r 2(1)(a): *Lowsley v Forbes (t/a LE Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL; and see *National Westminster Bank plc v Powney* [1991] Ch 339, [1990] 2 All ER 416, CA; and *WT Lamb & Sons v Rider* [1948] 2 KB 331, [1948] 2 All ER 402, CA. It is, however, a general rule that, as a matter of principle, the passage of six years is of itself a sufficient ground for refusing permission to issue a writ of execution to enforce an earlier judgment: *Patel v Singh* [2002] EWCA Civ 1938, [2002] All ER (D) 227 (Dec), approved in *Good Challenger Navegante SA v Metalexportimport SA, The Good Challenger* [2003] EWCA Civ 1668, [2004] 1 Lloyd's Rep 67, [2003] All ER (D) 320 (Nov). As to time for the issue of execution see **CIVIL PROCEDURE** vol 12 (2009) PARA 1274.

2 Limitation Act 1980 s 24(1). 'Enforceable' means enforceable by claim on the judgment, not by execution: *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 at 293, [1971] 2 All ER 117 at 126 (affd [1971] 2 QB 463, [1971] 2 All ER 1513, CA). A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify: CPR 40.7(1). This rule applies to all judgments and orders except those to which CPR 40.10 (judgment against a state) applies: CPR 40.7(2). As to the methods of enforcing judgments see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1244-1250; and as to execution generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1265 et seq. The limitation period begins to run for an order for costs at the date of certification, not on the date the costs order was made: *Chohan v Times Newspapers Ltd* [2001] EWCA Civ 964, [2001] 1 WLR 1859, [2001] All ER (D) 243 (Jun), CA. A statutory demand based on a default judgment debt obtained more than six years prior to the service of the demand was held to be statute-barred under the Limitation Act 1980 s 24 in *Re a Debtor (No 647-SD-1999)* (2000) Times, 10 April.

See also *Ezekiel v Orakpo* [1997] 1 WLR 340, CA (application to enforce charging order not claim to enforce judgment).

3 Limitation Act 1980 s 24(2); and see *Lowsley v Forbes (t/a LE Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL. As to arrears of interest see *O'Kelly v Bodkin* (1840) 2 I Eq R 361; *Henry v Smith* (1842) 4 I Eq R 502; *Foley v Dumas* (1839) Smythe 178; *Re Fitzgerald, M'Donnell v Fitzgerald* [1897] 1 IR 556; and as to the principle that the interest claim is barred when the claim for the principal is barred see *Elder v Northcott* [1930] 2 Ch 422. As to interest on judgment debts see generally **CIVIL PROCEDURE** vol 12 (2009) PARA 1149.

4 *Bank of Scotland v Bennett* [2004] EWCA Civ 988, (2004) Times, 4 August, [2004] All ER (D) 417 (Jul).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ix) Judgments/1011. Meaning of 'judgment'.

1011. Meaning of 'judgment'.

The limitation period for bringing a claim on a judgment applies to any final judgment for the payment of a specific sum of money, whether in law or in equity¹, and is not confined to a judgment which is a charge on land², but it is limited to an English judgment³. The limitation does not extend to the presentation of a winding-up or bankruptcy petition⁴ or to a statutory demand in bankruptcy⁵; and execution is not within the meaning of 'claim'⁶.

1 *Dunne v Doyle* (1860) 10 I Ch R 502.

2 See *Jay v Johnstone* [1893] 1 QB 189, CA; *WT Lamb & Sons v Rider* [1948] 2 KB 331 at 337, [1948] 2 All ER 402 at 407, CA; *Evans v O'Donnell* (1886) 18 LR Ir 170, CA; *Johnson v Lowry* [1900] 1 IR 316, CA.

3 As to claims founded on foreign judgments see PARA 957.

4 *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] EWCA Civ 92, [2005] 2 All ER 304, [2005] 1 WLR 2871 (not referring to *Re Tynte, ex p Tynte* (1880) 15 ChD 125, where the opposite view was taken; and not following *Re a Debtor (No 50A-SD-1995)* [1997] Ch 310, [1997] 2 All ER 789).

5 *Bailey v Hill* [2003] EWHC 2646 (Ch), [2003] All ER (D) 55 (Oct).

6 See PARAS 915, 1010.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(ix) Judgments/1012. Effect of new judgment.

1012. Effect of new judgment.

The fact that a fresh judgment may have been recovered in a claim on the original judgment will not extend the time for bringing any proceedings on the original judgment¹, but the new judgment creates a new judgment debt, and proceedings may be taken on it independently.

Leave to issue execution does not, it seems, make time begin to run afresh².

1 *Watters v Lidwill* (1847) 9 ILR 362; *Kealy v Bodkin* (1847) 9 ILR 383.

2 *Evans v O'Donnell* (1885) 16 LR Ir 445 at 452 per O'Brien J (affd (1886) 18 LR Ir 170, CA). *Evans v O'Donnell* was followed in *Johnson v Lowry* [1900] 1 IR 316, CA, where it was held that when a judgment creditor registered a judgment as a mortgage against the judgment debtor's land under the Judgment Mortgage (Ireland) Act 1850 s 7 (repealed), time began to run from the date of the judgment and not from the date of the registration.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(x) Recovery of Property under the Proceeds of Crime Act 2002/1013. Proceedings for recovery of property obtained through unlawful conduct etc.

(x) Recovery of Property under the Proceeds of Crime Act 2002

1013. Proceedings for recovery of property obtained through unlawful conduct etc.

None of the time limits given in the other provisions of the Limitation Act 1980¹ applies to any proceedings under the provisions of the Proceeds of Crime Act 2002² with regard to civil recovery of the proceeds of unlawful conduct³. Proceedings under those provisions for a recovery order⁴ in respect of any recoverable property⁵ may not be brought after the expiration of the period of twelve years from the date on which the cause of action of the relevant person⁶ accrued⁷. Such proceedings are brought when:

- 90 (1) a claim form is issued; or
- 91 (2) an application is made for a property freezing order⁸; or
- 92 (3) an application is made for an interim receiving order⁹,

whichever is the earliest¹⁰. The cause of action¹¹ accrues in respect of any recoverable property:

- 93 (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct¹², when the property is so obtained;
- 94 (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained¹³.

If a person would otherwise¹⁴ have a cause of action in respect of the conversion of a chattel, and proceedings are started¹⁵ for a recovery order in respect of the chattel, the provision of the Limitation Act 1980 providing for extinction of title in the case of successive conversions¹⁶ does not prevent his asserting on an application under the relevant provision of the 2002 Act¹⁷ that the property belongs to him, or the court making a declaration in his favour under that provision¹⁸. If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished¹⁹.

1 Ie in the Limitation Act 1980 ss 1-27: see PARAS 952 et seq, 1015 et seq.

2 Ie proceedings under the Proceeds of Crime Act 2002 Pt 5 Ch 2 (ss 243-288).

3 Limitation Act 1980 s 27A(1) (s 27A added by the Proceeds of Crime Act 2002 s 288(1)).

4 'Recovery order' means an order made under the Proceeds of Crime Act 2002 s 266 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2154): s 316(1) (definition applied by the Limitation Act 1980 s 27A(7) (as added: see note 3)).

5 'Recoverable property' is to be read in accordance with the Proceeds of Crime Act 2002 ss 304-310: s 316(1) (definition as applied: see note 4). See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2149.

6 'Relevant person' means (1) the Serious Organised Crime Agency; (2) the Director of Public Prosecutions; (3) the Director of Revenue and Customs Prosecutions; or (4) the Director of the Serious Fraud Office: Limitation Act 1980 s 27A(8) (added by the Serious Crime Act 2007 Sch 8 Pt 7 para 147(1), (4)).

7 Limitation Act 1980 s 27A(2) (as added (see note 3); amended by the Serious Crime Act 2007 Sch 8 Pt 7 para 147(2)).

8 'Property freezing order' has the meaning given by the Proceeds of Crime Act 2002 s 245A(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2151): s 316(1) (definition added by the Serious Organised Crime and Police Act 2005 Sch 6 paras 4, 22(1), (2); and applied (see note 4)).

9 'Interim receiving order' has the meaning given by the Proceeds of Crime Act 2002 s 246(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2153): s 316(1) (definition as applied: see note 4).

10 Limitation Act 1980 s 27A(3) (as added (see note 3); amended by the Serious Organised Crime and Police Act 2005 Sch 6 para 2).

11 Ie the cause of action of the relevant person: see note 6.

12 'Property obtained through unlawful conduct' has the meaning given by the Proceeds of Crime Act 2002 s 242 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2148): s 316(1) (definition as applied: see note 4).

13 Limitation Act 1980 s 27A(4) (as added (see note 3); amended by the Serious Crime Act 2007 Sch 8 Pt 7 para 147(3)).

14 Ie but for the provisions of the Limitation Act 1980 ss 1-27.

15 Ie under the Proceeds of Crime Act 2002 Pt 5 Ch 2.

16 Ie the Limitation Act 1980 s 3(2): see PARA 988.

17 Ie under the Proceeds of Crime Act 2002 s 281: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2160.

18 Limitation Act 1980 s 27A(5) (as added: see note 3).

19 Limitation Act 1980 s 27A(6) (as added: see note 3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(x) Recovery of Property under the Proceeds of Crime Act 2002/1014. Proceedings for recovery of property for the purposes of an external order.

1014. Proceedings for recovery of property for the purposes of an external order.

None of the time limits given in the other provisions of the Limitation Act 1980¹ applies to any proceedings under the provisions of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005² with regard to civil proceedings for the realisation of property to give effect to an external order³. Such proceedings for a recovery order⁴ in respect of any recoverable property⁵ may not be brought after the expiration of the period of twelve years from the date on which the relevant person's⁶ cause of action accrued⁷. Such proceedings are brought when:

- 95 (1) a claim form is issued; or
- 96 (2) an application is made for a property freezing order⁸; or
- 97 (3) an application is made for an interim receiving order⁹,

whichever is earliest¹⁰. The relevant person's cause of action accrues in respect of any recoverable property:

- 98 (a) in the case of proceedings for a recovery order in respect of property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct¹¹, when the property is so obtained;
- 99 (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained, or believed to have been obtained, as a result of or in connection with criminal conduct which it represents is so obtained¹².

If a person would otherwise¹³ have a cause of action in respect of the conversion of a chattel, and proceedings are started¹⁴ for a recovery order in respect of the chattel, the provision of the Limitation Act 1980 providing for extinction of title in the case of successive conversions¹⁵ does not prevent his asserting on an application under the relevant provision¹⁶ that the property belongs to him, or the court making a declaration in his favour under that provision¹⁷. If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished¹⁸.

1 Ie in the Limitation Act 1980 ss 1-27A: see PARAS 952 et seq, 1015 et seq.

2 Ie under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, Pt 5 Ch 2 (arts 143-201): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2164.

3 Limitation Act 1980 s 27B(1) (s 27B added by SI 2005/3181). As to the meaning of 'external order' see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 391 note 17.

4 'Recovery order' means an order made under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, art 177: art 231(1) (definition applied by the Limitation Act 1980 s 27B(7)(b) (as added: see note 3)).

5 'Recoverable property' is to be read in accordance with the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, arts 202-207: art 231(1) (definition as applied (see note 4)).

6 For these purposes, 'relevant person' means (1) the Serious Organised Crime Agency; (2) the Director of Public Prosecutions; (3) the Director of Revenue and Customs Prosecutions; or (4) the Director of the Serious Fraud Office: Limitation Act 1980 s 27B(8) (added by SI 2008/302).

7 Limitation Act 1980 s 27B(2) (as added (see note 3); amended by SI 2008/302).

8 'Property freezing order' has the meaning given in the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, art 147(2): art 231(1) (definition as applied (see note 4)).

9 'Interim receiving order' has the meaning given by the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, art 151(2): art 231(1) (definition as applied (see note 4)).

10 Limitation Act 1980 s 27B(3) (as added: see note 3).

11 For these purposes, 'criminal conduct' is to be construed in accordance with the Proceeds of Crime Act 2002 s 447(8) (ie conduct which constitutes an offence in any part of the United Kingdom, or which would constitute an offence in any part of the United Kingdom if it occurred there): Limitation Act 1980 s 27B(7)(a) (as added: see note 3). As to the meaning of 'United Kingdom' see PARA 910 note 1.

12 Limitation Act 1980 s 27B(4) (as added (see note 3); amended by SI 2008/302).

13 Ie but for the provisions of the Limitation Act 1980 ss 1-27A.

14 Ie under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, Pt 5 Ch 2.

15 Ie the Limitation Act 1980 s 3(2): see PARA 988.

16 Ie under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181, art 192.

17 Limitation Act 1980 s 27B(5) (as added: see note 3).

18 Limitation Act 1980 s 27B(6) (as added: see note 3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(1) CONTRACT, TORT AND OTHER CLAIMS/(xi) Breach of Commonhold Duty/1015. Claims for breach of commonhold duty.

(xi) Breach of Commonhold Duty

1015. Claims for breach of commonhold duty.

A claim in respect of a right or duty¹ imposed or conferred by or by virtue of:

- 100 (1) a commonhold community statement²;
- 101 (2) the memorandum or articles of a commonhold association³;
- 102 (3) a provision made by or by virtue of Part 1⁴ of the Commonhold and Leasehold Reform Act 2002⁵,

may not be brought after the expiration of six years from the date on which the cause of action accrued⁶. This is subject to the provisions relating to the effect of disability, fraud, concealment and mistake⁷.

1 Ie a right or duty of a kind referred to in the Commonhold and Leasehold Reform Act 2002 s 37(1) (enforcement): see **COMMONHOLD** vol 13 (2009) PARA 337.

2 See the Commonhold and Leasehold Reform Act 2002 s 37(1)(a). As to the meaning of 'commonhold community statement' see **COMMONHOLD** vol 13 (2009) PARA 311.

3 See the Commonhold and Leasehold Reform Act 2002 s 37(1)(b). As to the memorandum and articles of association of the commonhold association see **COMMONHOLD** vol 13 (2009) PARA 306; and as to the meaning of 'commonhold association' see **COMMONHOLD** vol 13 (2009) PARA 305.

4 Ie the Commonhold and Leasehold Reform Act 2002 Pt 1 (ss 1-70): see **COMMONHOLD** vol 13 (2009) PARA 301 et seq.

5 See the Commonhold and Leasehold Reform Act 2002 s 37(1)(c).

6 Limitation Act 1980 s 19A (added by the Commonhold and Leasehold Reform Act 2002 s 68, Sch 5 para 4).

7 Limitation Act 1980 s 1(2). As to the provisions in question see PARA 1168 et seq.

UPDATE

1015 Claims for breach of commonhold duty

TEXT AND NOTE 3--Commonhold and Leasehold Reform Act 2002 s 37(1)(b) amended: SI 2009/1941.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(i) Application of the Limitation Act 1980 and of the Land Registration Act 2002/1016. Operation of the Limitation Act 1980.

(2) LAND AND RENT

(i) Application of the Limitation Act 1980 and of the Land Registration Act 2002

1016. Operation of the Limitation Act 1980.

The Limitation Act 1980 prescribes a normal limitation period of 12 years from the date on which the right of action accrued for claims for the recovery of unregistered land¹, with longer periods in a number of special cases².

A claim to recover land is a claim to obtain any land by judgment of a court and is not limited to proceedings which claim possession³. A foreclosure claim by a mortgagee is treated as a claim to recover land⁴; other types of claim by a mortgagee are treated as claims to recover money charged on land and are dealt with subsequently in this title⁵.

After the prescribed period has expired, the title of the person⁶ whose claim has been time-barred is extinguished⁷. As the law regards possession of land as evidence of seisin⁸, the effect of barring the true owner's right is to make the possessor's title an absolute one⁹, and such a title, if proved, can even be forced on a purchaser¹⁰. Once the true owner's title has been barred no subsequent acknowledgment can revive his right¹¹.

The Limitation Act 1980 also prescribes a limitation period of six years for the recovery of arrears of rent¹². A landlord's claim for recovery of land let accrues, in general¹³, when the tenancy comes to an end¹⁴ and is not affected by his claim for arrears of rent becoming barred¹⁵.

1 See the Limitation Act 1980 s 15(1); and PARA 1025. As to the meaning of 'claim' see PARA 915. References in the 1980 Act to a right of action to recover land include references to a right to enter into possession of the land or, in the case of rentcharges and tithes, to distrain for arrears of rent or tithe, and references to the bringing of such a claim include references to the making of such an entry or distress: s 38(7) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 14 paras 35, 37, Sch 23 Pt 4, as from a day to be appointed under s 148(5), so as to remove the references to rentcharges and arrears of rent; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

2 See the Limitation Act 1980 Sch 1 Pt II paras 10-13; and PARAS 1024, 1026-1028.

3 *Williams v Thomas* [1909] 1 Ch 713 at 730, CA, per Buckley LJ. See also *Vandeleur v Sloane* [1919] 1 IR 116, CA (claim for declaration of title held to be claim for recovery of land).

4 See the Limitation Act 1980 s 20(4); and PARA 1124. As to redemption claims see PARAS 1129-1137.

5 See PARA 1105 et seq.

6 As to the meaning of 'person' see PARA 903 note 6.

7 Limitation Act 1980 s 17 (amended by the Land Registration Act 2002 Sch 13). For the exception in the case of registered land see PARA 1017. As to the extinguishment of title to chattels see the Limitation Act 1980 s 3(2); and PARA 988. As to extinction of title on satisfaction of a claim for damages see PARA 991.

8 *Asher v Whitlock* (1865) LR 1 QB 1 at 6.

9 *Perry v Clissold* [1907] AC 73 at 79, PC.

10 See PARA 1097.

11 See PARA 1181.

12 See the Limitation Act 1980 s 19; and PARA 1033. See also *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA.

13 Limitations are imposed on the landlord's right to recover possession on the determination of certain tenancies: see eg the Rent Act 1977 Pt VII (ss 98-107); PARA 1067; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 1002 et seq.

14 For the special rules regarding accrual of this right of action see PARA 1057 et seq.

15 *Doe d Davy v Oxenham* (1840) 7 M & W 131. As to the enlargement of long terms into fee simple estates where a rent not exceeding £1 per annum has not been collected, or paid, for 20 years see the Law of Property Act 1925 s 153(4); and **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1386.

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1017. Operation of the Land Registration Act 2002.

The Land Registration Act 2002 has introduced fundamental changes in the law with regard to the recovery of possession of registered land¹. The relevant provisions of the Act may be summarised as follows:

- 103 (1) adverse possession, for however long, will not of itself bar the owner's title to a registered estate²;
- 104 (2) a squatter is entitled to apply to be registered as proprietor after ten years³ (rather than 12 years, as previously)⁴ and the registered proprietor of the estate, the registered proprietor of any charge over it and certain other persons interested in the land must be notified of the application⁵;
- 105 (3) if the application is not opposed by any of those notified under head (2) above, the squatter will be registered as proprietor of the land⁶;
- 106 (4) if it is so opposed, the application will be refused, subject to limited conditions⁷;
- 107 (5) if the application is refused but no steps are taken to evict the squatter or regularise his position and he remains in possession for another two years, he is entitled to reapply to be registered as proprietor and will be so registered whether or not the application is opposed⁸;
- 108 (6) where the registered proprietor brings proceedings to recover possession from the squatter, he will succeed unless the squatter can establish certain limited exceptions corresponding to those under head (4) above⁹.

Particular provision is made for special cases such as Crown foreshore¹⁰ and rentcharges¹¹ and there are transitional provisions protecting persons who had acquired rights under the Limitation Act 1980 before the coming into force of the Land Registration Act 2002¹².

No period of limitation under the Limitation Act 1980 in relation to the recovery of land¹³ runs against any person, other than a chargee, in relation to an estate in land¹⁴ or rentcharge the title to which is registered¹⁵. Similarly, no period of limitation under that Act in relation to the redemption of land¹⁶ runs against any person in relation to such an estate in land or rentcharge¹⁷. Accordingly, the provision of that Act which deals with the extinction of title on the expiry of the relevant time limit¹⁸ does not operate to extinguish the title of any person where, by virtue of these provisions, a period of limitation does not run against him¹⁹.

¹ As to the rationale behind the changes see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) para 14.6. See also *Overseas and Commercial Developments Ltd v Cox* [2002] EWCA Civ 635, [2002] All ER (D) 253 (Apr).

² See the Land Registration Act 2002 s 96; and PARA 1029.

³ See the Land Registration Act 2002 Sch 6 para 1; and PARA 1030.

⁴ As to the previous position see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1021.

⁵ See the Land Registration Act 2002 Sch 6 para 2; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1028.

⁶ See the Land Registration Act 2002 Sch 6 para 4; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1029.

7 See the Land Registration Act 2002 Sch 6 para 5; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1029.

8 See the Land Registration Act 2002 Sch 6 paras 6, 7; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1030.

9 See the Land Registration Act 2002 s 98; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1045-1046.

10 See the Land Registration Act 2002 Sch 6 para 13; and PARA 1031.

11 See the Land Registration Act 2002 Sch 6 para 14; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1035 et seq.

12 See the Land Registration Act 2002 Sch 11 paras 7, 11, 18; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 866, 962, 1024.

13 Ie under the Limitation Act 1980 s 15: see PARA 1025.

14 As to the meaning of 'land' see PARA 1018.

15 Land Registration Act 2002 s 96(1). It follows that the Limitation Act 1980 ss 29-32 (extension or exclusion of ordinary time limits: see PARA 1168 et seq) will not apply.

The Limitation Act 1980 will, however, continue to apply: (1) where there has been adverse possession against a leasehold estate, the lease was granted for a term of 21 years or less prior to 13 October 2003, and the lease remains unregistered and took effect as an overriding interest under the Land Registration Act 1925 s 70(1)(k) (repealed); (2) where a licensee or tenant at will is seeking to recover possession as against an adverse possessor, since licensees and tenants at will are not registered proprietors and will not be protected by the provisions of the Land Registration Act 2002 Sch 6 (see PARAS 1030-1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq); (3) where the right of re-entry with respect to a lease is not exercised within 12 years of the relevant breach (see the Limitation Act 1980 Sch 1 para 7; and PARA 1076). The situation described under head (1) above will no longer arise under the Land Registration Act 2002 because leases of seven years and over are registrable (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 827) and the period of seven years may be further reduced by order made by the Lord Chancellor (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1124). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 477 et seq. As to the situation described in head (2) above see *Asher v Whitlock* (1865) LR 1 QB 1 at 5; *Hunter v Canary Wharf Ltd* [1997] AC 655 at 703, [1997] 2 All ER 426 at 448-449, HL, per Lord Hoffmann; *Manchester Airport plc v Dutton* [2000] QB 133, sub nom *Dutton v Manchester Airport plc* [1999] 2 All ER 675, CA.

16 Ie under the Limitation Act 1980 s 16: see PARA 1129.

17 Land Registration Act 2002 s 96(2). As to the rationale behind this provision see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) paras 14.15-14.18.

The Limitation Act 1980 continues, however, to apply to claims by a mortgagee against a mortgagor in possession: see the Land Registration Act 2002 s 96(1), which excludes periods of limitation against a chargee; PARA 1029; and the text and notes 13-15. See further *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) paras 14.12-14.14.

18 Ie the Limitation Act 1980 s 17: see PARA 1095.

19 Land Registration Act 2002 s 96(3). For transitional provisions see the Land Registration Act 2002 Sch 12 para 18; the Land Registration Rules 2003, SI 2003/1417, r 224; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1024.

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1018. Meaning of 'land'.

For the purposes of the Limitation Act 1980, 'land' includes corporeal hereditaments, tithes¹ and rentcharges², and any legal or equitable estate³ or interest⁴ in land⁵. All other incorporeal hereditaments⁶ are excluded⁷, so that claims to protect easements and profits are unaffected by the Limitation Act 1980⁸. 'Land' also includes minerals and mineral strata⁹.

For the purposes of the Land Registration Act 2002, 'land' includes buildings and other structures, land covered with water¹⁰, and mines and minerals, whether or not held with the surface; and 'registered land' means a registered estate¹¹ or registered charge¹².

1 Tithes almost all existed as redemption annuities; tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were, however, extinguished as from 2 October 1977 and all relevant statutory provisions were repealed accordingly: see the Finance Act 1977 Sch 9 Pt V (repealed). Therefore any references to tithes made within this title are made only in so far as any tithes, not redemption annuities, may remain. As to those tithes which may still be in existence see **ECCLESIASTICAL LAW** vol 14 PARA 1213. In the case of tithes and rentcharges, references in the Limitation Act 1980 to the possession of land are to be construed as references to the receipt of the tithe or rent: see s 38(8).

2 The creation of new rentcharges is now mainly prohibited under the Rentcharges Act 1977 and existing rentcharges are to be extinguished by the year 2037: see the Rentcharges Act 1977 ss 2, 3; and **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 751, 774, 894.

3 The only estates which can subsist at law are an estate in fee simple absolute in possession and a term of years absolute: see the Law of Property Act 1925 s 1(1). This does not, however, affect the operation of any statute or the general law as to limitation of claims or proceedings relating to land: s 12.

4 For limitation purposes, equitable interests in land are treated as if they were legal estates: see the Limitation Act 1980 s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and PARA 1019. Equitable interests in land no longer include interests in the proceeds of the sale of land held upon trust for sale, such trusts having been replaced by a system of 'trusts of land' pursuant to the Trusts of Land and Appointment of Trustees Act 1996: see PARAS 1022-1023.

5 Limitation Act 1980 s 38(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4).

6 As to the rights which constitute incorporeal hereditaments see generally **REAL PROPERTY** vol 39(2) (Reissue) PARA 81.

7 See the Limitation Act 1980 s 38(1) (as amended: see note 5).

8 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 265.

9 *Wilkinson v Proude* (1843) 11 M & W 33; and see PARA 1084.

10 The Land Registration Act 2002 applies to land covered by internal waters of the United Kingdom which are (1) within England or Wales; or (2) adjacent to England or Wales and specified for these purposes by order made by the Lord Chancellor: s 130. As to the meaning of 'United Kingdom' see PARA 910 note 1.

11 'Registered estate' means a legal estate the title to which is entered in the register, other than a registered charge; and 'registered charge' means a charge the title to which is entered in the register: Land Registration Act 2002 s 132(1).

12 Land Registration Act 2002 s 132(1).

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PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(i) Application of the Limitation Act 1980
and of the Land Registration Act 2002/1019. Equitable interests in land.

1019. Equitable interests in land.

The Limitation Act 1980 applies to equitable interests in land¹ in like manner as it applies to legal estates; and for the purposes of the Act, but not otherwise, a right of action to recover land is deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land².

1 As to the meaning of 'land' see the Limitation Act 1980 s 38(1); and PARA 1018.

2 Limitation Act 1980 s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4). This provision is subject to the Limitation Act 1980 s 21(1), (2) which relates to claims in respect of trust property: see PARA 1140. For further special provisions as to settled land and land held on trust see s 18(2)-(4); and PARAS 1095-1096. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-1023, 1101.

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1020. Meaning of 'rent' and 'rentcharge'.

'Rent' includes a rentcharge and a rent service¹. Every rent reserved on a lease is a rent service².

'Rentcharge' means any annuity or periodical sum of money charged upon or payable out of land³, except a rent service or interest on a mortgage on land⁴. 'Rentcharge' includes a rentcharge granted by deed⁵, and an annuity charged on land, or a mixed fund of realty and personalty⁶, by will⁷ or by deed⁸. The creation of new rentcharges is now mainly prohibited under the Rentcharges Act 1977 and existing rentcharges are to be extinguished by the year 2037⁹.

Services due from a tenant for the holding of land, such as cleaning the parish church, may be rent¹⁰; mining royalties are merely a form of rent¹¹.

1 Limitation Act 1980 s 38(1).

2 See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 242.

3 As to the meaning of 'land' see PARA 1018.

4 Limitation Act 1980 s 38(1). There is no equivalent definition for the purposes of the Land Registration Act 2002. A rentcharge in possession issuing out of or charged on land, being either perpetual or for a term of years absolute, is capable of subsisting or of being conveyed or created at law as an interest or charge in or over land: Law of Property Act 1925 s 1(2)(b). See, however, the Rentcharges Act 1977 ss 1-3, which severely restrict the creation of new rentcharges and provide for the eventual extinction of most existing rentcharges; the text and note 9; and **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 751, 774, 894. A rentcharge (not being a rentcharge limited to take effect in remainder after or expectant on the failure or determination of some other interest) is a rentcharge in possession for this purpose, notwithstanding that the payments in respect of it are limited to commence or accrue at some time subsequent to its creation: Law of Property (Entailed Interests) Act 1932 s 2; and see PARA 1101. A rentcharge which does not come within the above definitions takes effect as an interest in equity (Law of Property Act 1925 s 1(3)) but this does not affect the operation of any statute, or of the general law for the limitation of claims or proceedings relating to land (s 12).

5 *Jones v Withers* (1896) 74 LT 572, CA.

6 *Dower v Dower* (1885) 15 LR Ir 264; *Re Nugent's Trusts* (1885) 19 LR Ir 140; *Re Turner, Klafenberg v Groombridge* [1917] 1 Ch 422.

7 *James v Salter* (1837) 3 Bing NC 544.

8 *Hughes v Coles* (1884) 27 ChD 231; and see PARAS 1107, 1158.

9 See the Rentcharges Act 1977 ss 2, 3.

10 *Doe d Edney v Benham* (1845) 7 QB 976; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 242.

11 See *Coal Commission v Earl Fitzwilliams Royalties Co* [1942] Ch 365, [1942] 2 All ER 56; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 242.

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1021. The effect of limitation.

No claim may be brought to recover arrears of rent or damages in respect of arrears of rent after the expiration of six years from the date on which the arrears became due¹. Nor may:

- 109 (1) at the date at which this volume states the law, any distress for arrears of rent be made; or
- 110 (2) as from a day to be appointed², the landlord's power of commercial rent arrears recovery³ be exercised,

after the expiration of six years from that date⁴.

The failure of a tenant to pay rent, for however long a period the failure continues, will not in itself bar the landlord's right to claim rent reserved by a lease, so long as the lease by which it is reserved exists⁵, but the arrears recoverable are limited to those which fall due within six years of the commencement of the claim or the levying of a distress or exercise of the power described in head (2) above⁶.

Rentcharges⁷ are treated as land for the purpose of the Limitation Act 1980⁸. When an unregistered rentcharge remains unpaid for 12 years from the date when time begins to run⁹, the owner's title to the rentcharge, taken as a whole, is extinguished as at expiry of that time¹⁰. The extinguishment occurs even when the rentcharge is also secured by a power of re-entry¹¹. Special provision is made as to the construction in relation to rentcharges of references to the possession of land or to dispossession¹².

With regard to registered rentcharges which remain unpaid for a period of ten years, the Land Registration Rules 2003¹³ apply the statutory provisions relating to adverse possessors¹⁴ subject to modifications and exceptions¹⁵.

1 See the Limitation Act 1980 s 19; and see PARA 1033. Where a lease or a guarantee is under seal (and therefore a specialty for which the applicable limitation period is normally 12 years: see PARA 975) the limitation period is none the less six years: see s 8(2); and *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA.

2 Ie under the Tribunals, Courts and Enforcement Act 2007 s 148(5). At the date at which this volume states the law, no such day had been appointed.

3 Ie the power under the Tribunals, Courts and Enforcement Act 2007 s 72(1) (not yet in force).

4 Limitation Act 1980 s 19 (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 s 86, Sch 14 paras 35, 36, as from a day to be appointed (see note 2), so as to remove the reference to distress and substitute a reference to commercial rent arrears recovery; at the date at which this volume states the law, that amendment was not in force).

5 See PARA 1057. As to the position where a rent of not less than £10 is paid to someone other than the true reversioner on the lease see PARA 1063. As to the date when a tenancy at will or a tenancy without a lease in writing is deemed to be determined see PARA 1057.

6 See PARA 1033.

7 As to the meaning of 'rentcharge' see PARA 1020.

8 See the Limitation Act 1980 s 38(1); and PARA 1018.

9 As to when time begins to run in the case of rentcharges see PARA 1072.

10 See the Limitation Act 1980 ss 15(1), 17; and PARAS 1025, 1095. The statute does not apply in the case of an annuity charged on land abroad: see *Pitt v Lord Dacre* (1876) 3 ChD 295. The limitation periods here provided are subject to extension in the case of disability, acknowledgment or fraud: see PARA 1168 et seq.

11 *Sykes v Williams* [1933] Ch 285, CA.

12 See the Limitation Act 1980 s 38(8); and PARA 1072. As to the construction of references to a right of action to recover land or to the bringing of a claim see s 38(7); and PARA 1016 note 1.

13 In the Land Registration Rules 2003, SI 2003/1417, rr 191-194, Sch 8: see PARA 1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1035 et seq.

14 In the Land Registration Act 2002 Sch 6 paras 1-13: see PARAS 1030-1031; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

15 See the Land Registration Act 2002 Sch 6 para 14; the Land Registration Rules 2003, SI 2003/1417, rr 191-194, Sch 8; para 1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1035 et seq.

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PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(i) Application of the Limitation Act 1980 and of the Land Registration Act 2002/1022. Settled land.

1022. Settled land.

In general, the Limitation Act 1980 applies to settled land as well as to any other unregistered land, but special protection is given to interests in remainder, and for this purpose the legal estate which would otherwise be extinguished may be prolonged¹. However, the Trusts of Land and Appointment of Trustees Act 1996² introduced a new unitary system of holding land on trust replacing the existing dual systems of the trust for sale and the strict settlement with the 'trust of land' and enabling trustees to prolong sale³. Accordingly, subject to certain exceptions, no settlement created after 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925 and no settlement is deemed to be made under that Act thereafter⁴.

If an estate tail is made unbarrable by Act of Parliament, the Limitation Act 1980 has no application⁵.

1 See PARAS 1044-1056.

2 The Trusts of Land and Appointment of Trustees Act 1996 came into force on 1 January 1997: s 27(2); Trusts of Land and Appointment of Trustees Act (Commencement) Order 1996, SI 1996/2974.

3 See the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 4; and PARA 1023.

4 Trusts of Land and Appointment of Trustees Act 1996 s 2(1). This provision does not apply to a settlement created on the occasion of an alteration in any interest in, or of a person becoming entitled under, a settlement which (1) is in existence as at 1 January 1997; or (2) derives from such a settlement: see s 2(2). As to the further restrictions placed upon the creation of entailed interests subsequent to 1 January 1997 by the 1996 Act see PARA 1101.

5 *Earl of Abergavenny v Brace* (1872) LR 7 Exch 145. A reversion to the Crown expectant on the determination of an estate tail granted by the Crown to a subject for services cannot be barred: see the Feigned Recoveries Act 1542 s 1 (repealed); the Fines and Recoveries Act 1833 s 18. The repeal of the Feigned Recoveries Act 1542 s 1 does not make barrable any entail existing at 22 October 1969 which was unbarrable by reason of that provision: Statute Law (Repeals) Act 1969 s 4(4). See also *Robinson v Giffard* [1903] 1 Ch 865. To such a reversion the Limitation Act 1980 would have no application. The particular estate of the person presently entitled may, however, be barred.

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1023. Trusts of land.

The Trusts of Land and Appointment of Trustees Act 1996 introduced a new system of holding land on trust with the imposition of the 'trust of land'¹. In the case of every trust for sale of land created by a disposition there is implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land; and the trustees are not liable in any way for postponing sale of the land, in the exercise of their discretion, for an indefinite period². This provision applies to a trust whether it is created, or arises, before or after 1 January 1997 but does not affect any liability incurred by trustees before that date³.

1 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1(2), 4. The 1996 Act repealed the definition of trust for sale within the Limitation Act 1980: see the Trusts of Land and Appointment of Trustees Act 1996 Sch 4.

2 Trusts of Land and Appointment of Trustees Act 1996 s 4(1).

3 Trusts of Land and Appointment of Trustees Act 1996 s 4(2), (3); Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974.

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1024. Ecclesiastical courts and church property.

Proceedings in any ecclesiastical court to recover property must be brought within the same periods as proceedings in the civil courts¹.

Claims of spiritual and eleemosynary corporations sole to recover unregistered land² may not be brought more than 30 years after the right of action accrued³. Claims of such corporations to recover registered land are subject to the normal procedure under the Land Registration Act 2002⁴.

1 In the Limitation Act 1980, 'action' (now known as a 'claim') includes any proceeding in an ecclesiastical court: s 38(1); and see PARA 915. As to the jurisdiction of the ecclesiastical courts see **ECCLESIASTICAL LAW** vol 14 PARA 1270.

2 As to the meaning of 'land' see PARA 1018.

3 Limitation Act 1980 s 15(1), (7), Sch 1 para 10.

4 See PARA 1029 et seq.

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(ii) The Periods of Limitation

A. RECOVERY OF LAND

(A) UNREGISTERED LAND

1025. Normal period for recovery of land.

Subject to the provisions providing for the extension of periods of limitation in cases of disability, acknowledgment, part payment, fraud, concealment and mistake¹, no claim² may be brought by any person³, other than the Crown or a spiritual or eleemosynary corporation sole⁴, to recover any unregistered land⁵ after the expiration of 12 years from the date on which the right of action accrued⁶ to him, or to the person through whom he claims if the right first accrued to that person⁷, and the person to whom the right first accrued is not the Crown or a spiritual or eleemosynary corporation sole⁸.

A person is deemed to claim through another person if he became entitled by, through, under or by the act of that other person to the right claimed⁹. A person, however, who becomes entitled to any estate or interest by virtue of a special power of appointment is not deemed to claim through the appointor¹⁰.

A right of action to recover land includes a right to enter into possession of the land or, in the case of tithes¹¹, to distrain for arrears of tithe and the bringing of a claim includes the making of such an entry or distress¹². At the date at which this volume states the law, such a right also includes, in the case of rentcharges¹³, a right to distrain for arrears of rent¹⁴.

1 le the provisions of the Limitation Act 1980 Pt II (ss 28-33): see s 1; and PARA 1168 et seq.

2 As to the meaning of 'claim' see PARA 915.

3 As to the meaning of 'person' see PARA 903 note 6.

4 See the Limitation Act 1980 Sch 1 para 10. A special period of 30 years is laid down for claims by the Crown and such corporations sole: see PARA 1026.

5 As to 'a claim to recover land' see the Limitation Act 1980 s 38(7); and PARA 1016. An application to the Land Registry under the Land Registration Act 1925 (repealed) was not a claim to recover land within that definition; nor were proceedings to remove cautions against the claimants' title in relation to the disputed land: *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676, [2000] 2 EGLR 137 per Neuberger J. As to the meaning of 'land' see PARA 1018. As to foreshore see PARA 1027.

6 As to accrual of the cause of action see the Limitation Act 1980 Sch 1; and PARA 1034 et seq. In a claim to enforce a legal charge on land to secure a bank overdraft, where the covenant was to pay on demand, the right of action accrued at the time of the demand for payment: *Lloyds Bank Ltd v Margolis* [1954] 1 All ER 734, [1954] 1 WLR 644. However, it will in all cases be necessary to construe the terms of the agreement to determine whether or not a demand is a necessary prerequisite to the accrual of the cause of action: see PARA 1125. Where under an agreement for the sale of land the vendor is entitled to rescind on breach of a condition and re-enter the land, the right of action accrues when the vendor rescinds: *Lakshmijit s/o Bhai Suchit v Faiz Mohammed Kahn Sherani (as administrator for estate of Shahbaz Khan)* [1974] AC 605, [1973] 3 All ER 737, PC.

7 Limitation Act 1980 s 15(1).

8 For the period of limitation where the person through whom the person bringing the claim claims is the Crown or such a corporation see PARA 1028.

9 Limitation Act 1980 s 38(5); and see *Eddis v Chichester Constable* [1969] 2 Ch 345 at 356-357, [1969] 2 All ER 912 at 916, CA. Any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession is deemed to be claiming through the person so entitled: Limitation Act 1980 s 38(5). As to entailed interests generally see PARA 1101; and **REAL PROPERTY** vol 39(2) (Reissue) PARAS 117-120.

10 Limitation Act 1980 s 38(6).

11 As to tithes which may still be in existence see PARA 1018 note 1.

12 Limitation Act 1980 s 38(7). As to the construction of references to the possession of land in the case of tithes see s 38(8); and PARAS 1018, 1072.

13 As to the meaning of 'rentcharge' see PARA 1020.

14 See the Limitation Act 1980 s 38(7) (prospectively amended, so as to remove the references to rentcharges and to distraining for arrears of rent, by the Tribunals, Courts and Enforcement Act 2007 Sch 14 paras 35, 37, Sch 23 Pt 4, as from a day to be appointed under s 148(5); at the date at which this volume states the law, no such day had been appointed and that amendment was not in force). As to the construction of references to the possession of land in the case of rentcharges see s 38(8); and PARAS 1018, 1072.

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1026. Claims by the Crown or a spiritual or eleemosynary corporation sole.

No claim¹ may be brought by the Crown² or any spiritual or eleemosynary corporation sole³ to recover any unregistered land⁴ after the expiration of 30 years from the date on which the right of action accrued to the Crown, the corporation sole or the person through whom the Crown or such corporation claims⁵. If the claim is through another person, the title of the Crown or the corporation must normally have been acquired within 12 years from the date on which any right of action accrued to that other person, as after the expiration of that period the person in question would have had no title to pass to the Crown or corporation⁶.

The Crown is entitled to acquire title to land by adverse possession⁷.

1 As to the meaning of 'claim' see PARA 915.

2 In this context proceedings by or against the Crown include proceedings by or against (1) Her Majesty in right of the Duchy of Lancaster; (2) any government department or any officer of the Crown as such or any person acting on behalf of the Crown; and (3) the Duke of Cornwall: Limitation Act 1980 s 37(3).

3 As to the meaning of 'spiritual corporation sole' see **ECCLESIASTICAL LAW** vol 14 PARA 1254. As to the meaning of 'eleemosynary corporation' see **CHARITIES** vol 8 (2010) PARA 224. Claims by spiritual and eleemosynary corporations aggregate (see **CORPORATIONS** vol 9(2) (2006 Reissue) PARAS 1109-1110) are regulated by the general provisions of the Limitation Act 1980.

4 As to the meaning of 'land' and 'recovery of land' see PARAS 1016, 1018. For special provision as to foreshore see PARA 1027. In respect of claims brought by the Crown, 'any land' is not restricted to 'any Crown land': *Secretary of State for Foreign and Commonwealth Affairs v Tomlin* (1990) Times, 4 December, CA.

5 Limitation Act 1980 s 15(1), Sch 1 para 10. As to when a person is deemed to claim through another person see PARA 1025. In *Fowke v Berington* [1914] 2 Ch 308 at 323, where a perpetual curate claimed a declaration that certain ruins on the defendant's land formed part of the parish church, it was argued that consecration, although it would prevent the land from being used for secular purposes, did not prevent the (then) statutes of limitation running against the claimant so as to bar his claim after the period of 60 years then appropriate, but no decision was given on this point. For the effect of consecration generally see **ECCLESIASTICAL LAW** vol 14 PARA 1306.

6 See the Limitation Act 1980 s 15(1); and PARAS 1025, 1095.

7 *Roberts v Crown Estate Comrs* [2008] EWCA Civ 98, [2008] 2 P & CR 1, [2008] All ER (D) 286 (Feb).

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1027. Foreshore.

Under the Limitation Act 1980, the Crown may bring a claim for the recovery of foreshore¹ at any time before the expiration of 60 years from the date on which the right of action accrued². If land has ceased to be foreshore but remains Crown property, the Crown may bring its claim within 60 years from the accrual of the right or within 30 years from the date when the land ceased to be foreshore, whichever period first expires³. If Crown foreshore, or former foreshore, passes into the ownership of some other person, that person or his successors may sue for its recovery within the periods which would have been available to the Crown or within 12 years from the date on which the right of action passed to that other person, whichever period first expires⁴.

In making title to foreshore which must have been originally in the Crown, it is necessary to show either a grant by the Crown to a subject, or a possessory title acquired against the Crown; a root of title 60 years old is not sufficient by itself⁵.

1 'Foreshore' means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring tides and the neap tides: Limitation Act 1980 Sch 1 para 11(3). As to the Crown's rights to foreshore see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 242.

2 Limitation Act 1980 Sch 1 para 11(1).

3 Limitation Act 1980 Sch 1 para 11(2).

4 Limitation Act 1980 Sch 1 para 12.

5 *Fowley Marine (Emsworth) Ltd v Gafford* [1968] 2 QB 618 at 631, [1968] 1 All ER 979 at 984, CA.

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1028. Period when claim made through the Crown or a corporation sole.

If the right of action first accrued to the Crown¹ or a spiritual or eleemosynary corporation sole² through whom the claimant claims, the claim may be brought at any time before the expiration of the period during which the claim could have been brought by the Crown or that corporation sole³, or of 12 years from the date on which the right of action accrued to some person other than the Crown or that corporation sole, whichever period first expires⁴.

1 The Limitation Act 1980 Sch 1 para 12 provides a complete code for persons claiming through the Crown, whether the right of action accrued originally to the Crown, or only so accrued earlier; the true sense of the word 'first' is that of 'earlier' or 'previously': *Hill v Transport for London* [2005] EWHC 856 (Ch), [2005] Ch 379, [2005] 3 All ER 677.

2 As to the meaning of 'spiritual corporation sole' and 'eleemosynary corporation' see PARA 1026 note 3.

3 See PARA 1026.

4 Limitation Act 1980 Sch 1 para 12. This applies in particular to the Church Commissioners in whom much property formerly owned by spiritual corporations sole is now vested. As a corporation aggregate, the Church Commissioners may not rely on any special periods in their own right.

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(B) REGISTERED LAND

1029. Disapplication of periods of limitation under the Limitation Act 1980.

No period of limitation under the Limitation Act 1980 in relation to the recovery of land¹ runs against any person, other than a chargee, in relation to an estate in land² or rentcharge the title to which is registered³.

1 le under the Limitation Act 1980 s 15: see PARA 1025.

2 As to the meaning of 'land' see PARA 1018.

3 See the Land Registration Act 2002 s 96(1); and PARA 1017. It follows that the Limitation Act 1980 ss 29-32 (extension or exclusion of ordinary time limits: see PARA 1168 et seq) will not apply.

As to situations in which the Limitation Act 1980 will continue to apply despite the provision set out in the text see PARA 1017 note 15.

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1030. Normal period after which person in adverse possession may apply to be registered as proprietor.

A person may apply to the Chief Land Registrar¹ to be registered² as the proprietor of a registered estate³ in land⁴ if he has been in adverse possession⁵ of the estate for the period of ten years ending on the date of the application⁶. The estate need not have been registered throughout the period of adverse possession⁷.

A person may also apply to the registrar to be registered as the proprietor of a registered estate in land if:

- 111 (1) he has in the period of six months ending on the date of the application ceased to be in adverse possession of the estate because of eviction by the registered proprietor, or a person claiming under the registered proprietor⁸;
- 112 (2) on the day before his eviction he was entitled to make an application as described above⁹; and
- 113 (3) the eviction was not pursuant to a judgment for possession¹⁰.

A person may not, however, make any such application if he is a defendant in proceedings which involve asserting a right to possession of the land¹¹ or if judgment for possession of the land has been given against him in the last two years¹². The right to make such applications is also subject to other restrictions¹³.

1 As to the Chief Land Registrar see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1066.

2 'Registered' means entered in the register: Land Registration Act 2002 s 132(1).

3 As to the meaning of 'registered estate' see PARA 1018 note 11.

4 As to the meaning of 'land' see PARA 1018.

5 As to the meaning of 'adverse possession' see PARA 1078.

6 Land Registration Act 2002 Sch 6 para 1(1). In relation to adverse possession of Crown foreshore, the required period is 60 years instead of ten years: see PARA 1031.

7 Land Registration Act 2002 Sch 6 para 1(4).

8 Land Registration Act 2002 Sch 6 para 1(2)(a). Schedule 6 para 1(2) does not apply in relation to rentcharges: see PARA 1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1035.

9 Land Registration Act 2002 Sch 6 para 1(2)(b).

10 Land Registration Act 2002 Sch 6 para 1(2)(c).

11 Land Registration Act 2002 Sch 6 para 1(3)(a). Cf *Markfield Investments Ltd v Evans* [2001] 2 All ER 238, [2001] 1 WLR 1321, CA. As to modifications in relation to rentcharges see PARA 1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1035-1036.

12 Land Registration Act 2002 Sch 6 para 1(3)(b). See also note 11.

13 See the Land Registration Act 2002 Sch 6 para 8; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1031.

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1031. Crown foreshore.

Where a person is in adverse possession¹ of an estate in land², the estate belongs to Her Majesty in right of the Crown³, the Duchy of Lancaster or the Duchy of Cornwall⁴, and the land consists of foreshore⁵, that person may only apply to the Chief Land Registrar⁶ to be registered as the proprietor of a registered estate in that land if he has been in such adverse possession for a period of 60 years⁷, instead of the ten-year period applying in other cases⁸.

These provisions do not apply to rentcharges⁹.

1 As to the meaning of 'adverse possession' see PARA 1078.

2 As to the meaning of 'land' see PARA 1018.

3 As to Crown property see generally **CROWN PROPERTY**; and as to registration of the Crown's demesne land see **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 883-885.

4 As to the Duchies of Lancaster and of Cornwall see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 300 et seq, 318 et seq.

5 For these purposes, 'foreshore' means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring and neap tides (Land Registration Act 2002 Sch 6 para 13(3)); and land is to be treated as foreshore if it has been foreshore at any time in the previous ten years (Sch 6 para 13(2)).

6 As to the Chief Land Registrar see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1066.

7 I.e. the Land Registration Act 2002 Sch 6 para 1(1) (see PARA 1030) is to have effect as if the reference to ten years were a reference to 60 years: Sch 6 para 13(1).

8 See the Land Registration Act 2002 Sch 6 para 13(1).

9 See PARA 1032; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1035 et seq.

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1032. Rentcharges.

A person may apply to the Chief Land Registrar¹ to be registered² as the proprietor of a registered rentcharge if he has been in adverse possession³ of the registered rentcharge for the period of ten years ending on the date of the application⁴.

A person may not, however, make such an application if:

- 114 (1) he is a defendant in proceedings by the registered proprietor of the registered rentcharge for recovery of the rent or to enter into possession of the land⁵ out of which the registered rentcharge issues⁶;
- 115 (2) judgment in favour of the registered proprietor of the registered rentcharge in respect of proceedings of the nature mentioned in head (1) above has been given against him in the last two years⁷; or
- 116 (3) the registered proprietor of the registered rentcharge of which that person was in adverse possession has entered into possession of the land out of which the registered rentcharge issues⁸.

1 As to the Chief Land Registrar see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1066.

2 As to the meaning of 'registered' see PARA 1030 note 2.

3 As to the meaning of 'adverse possession' see PARA 1078.

4 Land Registration Act 2002 Sch 6 para 1(1) (Sch 6 para 1 modified by SI 2003/1417). For these purposes, the registered rentcharge need not have been registered throughout the period of adverse possession: Sch 6 para 1(3) (as so modified).

5 As to the meaning of 'land' see PARA 1018.

6 Land Registration Act 2002 Sch 6 para 1(2)(a) (as modified: see note 4).

7 Land Registration Act 2002 Sch 6 para 1(2)(b) (as modified: see note 4).

8 Land Registration Act 2002 Sch 6 para 1(2)(c) (as modified: see note 4).

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B. ARREARS OF RENT AND INTEREST

1033. Arrears of rent and interest.

A six-year period of limitation, from the date due, is set for claims for the recovery of the following:

- 117 (1) arrears of rent¹;
- 118 (2) interest in respect of any sum of money secured by a mortgage or other charge, or payable in respect of proceeds of the sale of land²;
- 119 (3) interest in respect of any legacy³;
- 120 (4) damages in respect of any of the above⁴.

This period is extended in cases of disability, acknowledgment, part payment, fraud and mistake⁵.

This period applies to rent whether the arrears are sought to be recovered by distress⁶, by commercial rent arrears recovery⁷, or by bringing a claim⁸. It makes no difference that the rent is secured by covenants, for the shorter period prevails over the general 12-year period for specialties⁹.

1 Limitation Act 1980 s 19. 'Rent' includes a rentcharge and a rentservitude: s 38(1); and see PARA 1020. As to the application of this provision to annuities see PARA 1107. The six-year limitation period for arrears of rent, or damages in respect of arrears of rent, applies not only to claims against a lessee but also to claims against a guarantor of the lessee's undertaking to pay the rent reserved by the lease, notwithstanding that both the lease and guarantee are under seal: see *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA.

2 Limitation Act 1980 s 20(5); see also PARA 1111. As to the saving of certain rights of subsequent incumbrancers see PARA 1119; and as to the saving of certain rights of mortgagees of future interests or life insurance policies see PARA 1117.

3 Limitation Act 1980 s 22(b).

4 Limitation Act 1980 ss 19, 20(5), 22(b). A payee's right to recover the principal and six years' arrears of interest is not barred and his title to land (if unregistered) is not extinguished until 12 years from the last payment of interest; thus, a chargee who has received no interest for 11 years may recover the interest for the sixth to eleventh years but loses that for the first five years: see ss 15(1), 19, 20. Similarly a lessor's right to recover current rent and arrears for the past six years is not barred until 12 years from the expiration of the lease: see PARA 1057. The six-year limitation period set by s 20(5) for claims to recover arrears of interest payable in respect of sums secured by mortgage or charge runs from the date when the lender could first have brought a claim to recover the interest, rather than the date when it was due to be paid: see *Barclays Bank plc v Walters* (1988) Times, 20 October, CA; and PARA 1111.

5 See the Limitation Act 1980 s 1(2); and PARA 1168 et seq. See also s 28(4) (30-year period for recovery of money charged on land where disability exists); and PARA 1172; s 29(4) (12-year period from payment of interest to mortgagee in possession, or acknowledgment of mortgagor's title by mortgagee in possession); and PARA 1183; s 32 (postponement in case of fraud, concealment or mistake); and PARA 1220 et seq.

6 As to the prospective abolition of the common law right to distrain for arrears of rent see the Tribunals, Courts and Enforcement Act 2007 s 71 (not yet in force).

7 Ie by the exercise of the power conferred by the Tribunals, Courts and Enforcement Act 2007 s 72 (not yet in force).

8 See the Limitation Act 1980 s 19 (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 14 paras 35, 36, as from a day to be appointed under s 148(5), so as to remove the reference to distress and substitute a reference to commercial rent arrears recovery; at the date at which this volume states the law, no such day had been appointed and that amendment was not in force).

9 Limitation Act 1980 s 8(2); and see *Romain v Scuba TV Ltd* [1997] QB 887, [1996] 2 All ER 377, CA; and PARA 975. This proviso abrogates the rule laid down in *Paget v Foley* (1836) 2 Bing NC 679.

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(iii) Accrual of the Cause of Action under the Limitation Act 1980

A. IN GENERAL

1034. Accrual of cause of action; in general.

Special provision is made within the Limitation Act 1980 for accrual of rights of action to recover unregistered land¹. These statutory provisions and the position where the time of accrual is not expressly laid down are considered in the following paragraphs². No right of action to recover land accrues unless the land is in possession of some person in whose favour the period of limitation can run ('adverse possession') and, where a right of action would have accrued on a certain date but for the fact that no person is in adverse possession at that date, the right of action does not accrue unless and until adverse possession is taken of the land³. Further, where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action is no longer treated as having accrued and no fresh right of action is treated as accruing unless and until the land is again taken into adverse possession⁴.

1 See the Limitation Act 1980 Sch 1 paras 1-3 (present interests in land), Sch 1 para 4 (future interests); Sch 1 para 5 (certain tenancies); Sch 1 para 7 (forfeiture or breach of condition); s 18(3), (4) (trusts of, and settled, land).

2 See PARA 1035 et seq.

3 Limitation Act 1980 Sch 1 para 8(1); and see PARA 1078. See also *Ashe v National Westminster Bank plc* [2008] EWCA Civ 55, [2008] 1 WLR 710, [2008] All ER (D) 128 (Feb).

4 Limitation Act 1980 Sch 1 para 8(2). Possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent is treated as adverse possession of the rentcharge: Sch 1 para 8(3)(a); and see PARA 1072. Receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant upon the determination of the lease is treated as adverse possession of the land: Sch 1 para 8(3)(b).

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1035. Present interests.

If a person bringing a claim¹ to recover unregistered land², or some person through whom he claims³, has been in possession of the land, and has, while entitled to the land, been dispossessed or has discontinued his possession⁴, the right of action is deemed to have accrued on the date of the dispossession or discontinuance⁵.

1 As to the meaning of 'claim' see PARA 915.

2 As to the meaning of 'land' see PARA 1018. As to the construction of references to rights of action to recover land see PARA 1016.

3 As to when one person is deemed to claim through another see PARA 1025.

4 Dispossession occurs where a person comes in and drives out another from possession; discontinuance of possession occurs where a person in possession goes out and another takes possession: see *Williams Bros Direct Supply Stores Ltd v Raftery* [1958] 1 QB 159, [1957] 3 All ER 593, CA; *Wallis's Cayton Bay Holiday Camp Ltd v Shell-Mex and BP Ltd* [1975] QB 94, [1974] 3 All ER 575, CA; *Treloar v Nute* [1977] 1 All ER 230, [1976] 1 WLR 1295, CA; and PARA 1078 et seq. As to discontinuance of possession as regards boundaries see **BOUNDARIES** vol 4(1) (2002 Reissue) para 909.

5 Limitation Act 1980 Sch 1 para 1.

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1036. Death of former owner.

Where a person brings a claim to recover any unregistered land¹ of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge² created by will or taking effect on his death, in possession of the land charged, and was the last person entitled to the land to be in possession of it, the right of action is deemed to have accrued on the date of his death³.

If the owner of land dies and the tenant pays the rent to a person in the belief that that person is acting for the true owner, and that person, knowing of the belief, accepts the rent, and the true owner within a reasonable time adopts and ratifies the acts of that person in receiving the rent, there is no dispossession of the true owner⁴.

1 As to the meaning of 'land' see PARA 1018. As to the construction of references to rights of action to recover land see PARA 1016.

2 As to the meaning of 'rentcharge' see PARA 1020.

3 Limitation Act 1980 Sch 1 para 2. This applies to persons deriving title under a deceased person whether by devise or otherwise. As to where a settlor is out of possession at the time of his death see PARA 1045.

4 *Lyell v Kennedy, Kennedy v Lyell* (1889) 14 App Cas 437, HL; *M'Auliffe v Fitzsimons* (1889) 26 LR Ir 29. In such a case the Limitation Act 1980 has no application. The rents are received by the collector as trustee for the true owner. As to claims in respect of trust property in the possession of a trustee or received and converted by him see PARAS 1140-1142.

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1037. Accrual on or before date of death.

Where a cause of action has accrued to a person during his life, the limitation period continues to run notwithstanding his death¹, and it runs continuously even though there is an interval before a grant of probate or administration is obtained².

1 *Hickman v Walker* (1737) Willes 27; *Penny v Brice* (1865) 18 CBNS 393.

2 *Penny v Brice* (1865) 18 CBNS 393; *Fergusson v Fyffe* (1841) 8 Cl & Fin 121 at 140, HL. See also PARA 924.

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1038. Accrual after date of death where there is no executor.

Where the cause of action has accrued on or after the date of death and there is no executor, then if the claim is for the recovery of unregistered land¹, the administrator is deemed to claim as if there had been no interval of time between the death and the grant of letters of administration². If there is doubt whether the death or the accrual occurred first, the death will be presumed to have preceded the accrual³.

1 As to the meaning of 'land' see PARA 1018.

2 Limitation Act 1980 s 26. See further PARA 923.

3 *Atkinson v Bradford Third Equitable Building Society* (1890) 25 QBD 377, CA. See also PARA 923.

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1039. Accrual after date of death where there is an executor.

Where the deceased has appointed an executor, time begins to run from the accrual of the cause of action provided the executor acts or takes out probate¹. If probate is not granted within the relevant limitation period and no claim is begun before probate, the executor's claim is barred, but if probate is granted within the period and later revoked and an administrator appointed, time does not run against the administrator until the letters of administration are granted². There are special provisions as to the accrual of the right of action to recover land in which the claimant has a future estate or interest³ and it is also provided that where beneficial interests have not accrued or been time-barred under the Limitation Act 1980 the estate of trustees is not to be extinguished⁴.

1 The executor's title derives from his appointment: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 29. See also PARA 923 note 5.

2 *Chan Kit San v Ho Fung Hang* [1902] AC 257, PC.

3 See the Limitation Act 1980 Sch 1 para 4; and PARA 1044 et seq.

4 See the Limitation Act 1980 s 18(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and PARA 1096.

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1040. Claim based on assurance other than by will.

Where any person brings a claim¹ to recover unregistered land², being an estate or interest in possession³ assured otherwise than by will to him, or to some person through whom he claims⁴, and the person making the assurance was, at the date when the assurance took effect, in possession of the land or, in the case of a rentcharge⁵ created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action⁶ is deemed to have accrued on the date when the assurance took effect⁷.

1 As to the meaning of 'claim' see PARA 915.

2 As to the meaning of 'land' see PARA 1018.

3 An estate in fee simple subject to an occupation lease is an estate in possession: *Wakefield and Barnsley Union Bank Ltd v Yates* [1916] 1 Ch 452, CA.

4 As to when one person is deemed to claim through another see PARA 1025.

5 As to the meaning of 'rentcharge' see PARA 1020.

6 As to the construction of references to rights of action to recover land see PARA 1016.

7 Limitation Act 1980 Sch 1 para 3. As to the date when the assurance took effect see *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA (transferor remaining in possession as licensee).

Time does not run unless there is adverse possession: see the Limitation Act 1980 s Sch 1 para 8; and PARA 1078. If a person, who formerly owned both the surface of land and the minerals beneath, grants the minerals to someone else and retains possession of the surface, and neither the grantee nor anyone else works the minerals, time, it is submitted, would not run against the grantee: cf *Keyse v Powell* (1853) 2 E & B 132.

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1041. Defective disentailing assurance.

In any case where:

- 121 (1) a person entitled to remainder to an entailed interest in any unregistered land¹ makes an assurance of his interest which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar those estates and interests only; and
- 122 (2) any person takes possession of the land by virtue of the assurance,

if the person taking possession of the land by virtue of the assurance², or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of 12 years from the commencement of the time when the assurance could have operated as an effective bar, the assurance thereupon operates, and is treated as having always operated, to bar the issue in tail and the estates and interests taking effect on the determination of the entailed interest³.

As from 1 January 1997 the creation of settlements and entailed interests is severely restricted pursuant to the Trusts of Land and Appointment of Trustees Act 1996⁴.

1 As to the meaning of 'land' see PARA 915.

2 As to taking possession by virtue of an assurance see *Mills v Capel* (1875) LR 20 Eq 692 (purported conveyance in fee by person entitled to life estate and subsequent remainder in tail; until death of life tenant, possession of purchaser by virtue of life estate).

3 Limitation Act 1980 s 27(1), (2). As to strict settlements of land see PARA 1022. Reference to the time when the assurance could have operated as an effective bar is a reference to the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and the estates and interests taking effect on the determination of the entailed interest: s 27(3). If the person in possession under a defective disentailing assurance acknowledges the title of the issue in tail or remaindermen, s 27 ceases to apply: see s 29(2)(b); and PARA 1182.

4 As to the restriction on the creation of settlements and entailed interests in land subsequent to 1 January 1997 see PARAS 1022, 1101.

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1042. Cases where time of accrual not expressly provided for.

Although there are provisions of the Limitation Act 1980 which deal expressly with the time of accrual in certain cases¹, they do not limit the scope of the substantive rule of limitation contained in the general provision relating to claims to recover unregistered land². Consequently, there may be cases within that general provision for which the time of accrual must be ascertained on general principles³.

1 I.e. the Limitation Act 1980 Sch 1 paras 1-7: see PARAS 1034-1040.

2 I.e. the Limitation Act 1980 s 15: see PARAS 1025-1028.

3 See *James v Salter* (1837) 3 Bing NC 544; *Magdalen Hospital (President and Governors) v Knotts* (1878) 8 ChD 709 at 727, CA; *Pugh v Heath* (1882) 7 App Cas 235, HL; *Irish Land Commission v Judkin* (1888) 24 LR Ir 40; *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] AC 1072, [1968] 1 All ER 530, PC, where time ran against tenants in common under the common law in favour of two co-tenants who had exclusive possession.

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PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iii) Accrual of the Cause of Action under
the Limitation Act 1980/A. IN GENERAL/1043. Rentcharges.

1043. Rentcharges.

The right to bring a claim to recover unregistered rentcharges¹ is deemed to accrue, not when default is made in payment, but when the last payment is made². If there has never been a payment, the right accrues on the date of the donor's death³ or the date when the assurance creating the rentcharge (if otherwise than by will) takes effect⁴.

1 As to the meaning of 'rentcharge' see PARA 1020.

2 See the Limitation Act 1980 s 38(7), (8); and PARAS 1025, 1033, 1072.

3 See the Limitation Act 1980 Sch 1 para 2; and PARA 1036.

4 See the Limitation Act 1980 Sch 1 para 3; and PARA 1040.

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B. FUTURE INTERESTS

1044. General rule as to future interests.

The right of action to recover any unregistered land¹, in a case where (1) the estate² or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest³; and (2) no person has taken possession of the land⁴ by virtue of the estate or interest claimed, is treated as having accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest⁵. This does not, however, apply to any estate or interest which falls into possession on the determination of an entailed interest which might have been barred by the person entitled to the entailed interest⁶.

1 As to the construction of references to a right of action to recover land see the Limitation Act 1980 s 38(7); and PARA 1016.

2 The provisions of the Limitation Act 1980 apply to equitable interests in land in like manner as they apply to legal estates: s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and see PARAS 1019, 1022. As to the manner in which, under the Limitation Act 1980 s 18(2), (3), the legal estate is prolonged to preserve the rights of persons entitled to equitable interests see PARA 1096.

3 An estate in fee simple, even if subject to a lease, is not an estate or interest in reversion or remainder or other future estate or interest: *Wakefield and Barnsley Union Bank Ltd v Yates* [1916] 1 Ch 452, CA.

Note that, pursuant to the Trusts of Land and Appointment of Trustees Act 1996 s 2, no new settlements may be created, subject to certain exceptions, as from 1 January 1997: Trusts of Land and Appointment of Trustees Act (Commencement) Order 1996, SI 1996/2974; and see PARA 1022.

4 As to the meaning of 'land' see PARA 1018.

5 Limitation Act 1980 Sch 1 para 4. This is subject to the provisions of s 15(2)-(5) (see the text and note 6; and PARA 1045 et seq): Sch 1 para 4. As to the effect, as against devisees in remainder of a mortgagor, of the mortgagee going into possession see PARA 1131. As to mortgages of a reversionary interest see PARA 1125; and as to a legacy charged on a reversionary interest see PARA 1163. As to future estates and interests generally see **REAL PROPERTY** vol 39(2) (Reissue) PARA 162 et seq; **WILLS** vol 50 (2005 Reissue) PARA 411.

6 Limitation Act 1980 s 15(3). As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

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1045. Effect of settlement by person out of possession.

A person entitled to a future interest¹ has a new right at the time when the preceding estate determines, so that, if the owner of an estate in fee simple grants or devises out of it a particular interest with a remainder following, and the owner of the particular interest takes possession before time has run against the grantor's right, the right of the persons entitled in remainder accrues and may be enforced at the determination of the particular interest, even if the grantor had discontinued possession before the time of his grant or death².

Although time may be running against the settlor when the settlement is made, the fact that the grantee of a particular interest takes possession under the settlement reverts the title of all persons entitled to remainders under the settlement, as well as that of the settlor and the persons entitled in reversion. If, however, 12 years elapse after the dispossession of the grantor or his predecessors in title without entry into possession by the grantee of the particular interest, the persons entitled in reversion or remainder will be barred³. After time has once begun to run, a person cannot by putting his estate into settlement raise new rights and give new claims to persons deriving title under the settlement⁴.

Subject to exceptions in the case of settlements created on the occasion of an alteration in interest in, or of a person becoming entitled under, a settlement which was in existence prior to 1 January 1997 or which derives from such a settlement, the Trusts of Land and Appointment of Trustees Act 1996 severely restricts the creation of strict settlements after that date⁵.

1 See PARA 1044 notes 1-3.

2 See the Limitation Act 1980 Sch 1 para 4; and PARAS 1022, 1044.

3 See the Limitation Act 1980 s 15(4); and PARA 1047.

4 Limitation Act 1980 s 15(5). See also *Stackpoole v Stackpoole* (1843) 4 Dr & War 320 at 347 per Sugden LC. As to the case where the settlor is in possession at his death see PARA 1036.

5 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and PARA 1022.

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1046. When owner of preceding estate or interest out of possession.

Where (1) the estate or interest claimed is an estate or interest in reversion or remainder or any other future estate or interest¹ and the right of action to recover the unregistered land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and (2) if the person last entitled to any preceding estate or interest, not being a term of years absolute, was not in possession of the land at the time when his estate or interest determined, no claim may be brought² by the person entitled to the succeeding estate or interest after the expiration of 12 years from the date on which the right of action accrued to the person entitled to the preceding interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires³. Where, however, the Crown or a spiritual or eleemosynary corporation sole is entitled to the succeeding interest, the periods are 30 years and 12 years respectively⁴. These provisions do not apply to any estate or interest which falls into possession on the determination of an entailed estate or interest and which might have been barred by the person entitled to the entailed estate or interest⁵.

If there is a series of remainders limited to take effect in succession, each remainderman has at least six years to bring his claim after his own interest becomes an interest in possession, even though another person may have been in possession, without title, for 12 years⁶.

Where a tenant for life assigns his life interest and the grantee is in possession under the assignment, time does not run in favour of the grantee against the life tenant as the person entitled to the preceding estate, for the grantee's possession is not adverse, and the remainderman may bring his claim within 12 years after the death of the tenant for life and is not, as against the grantee, limited to 12 years from the grantee's taking possession or to six years from the grantor's death⁷.

1 See PARA 1044 notes 1-3.

2 As to rights of action and the bringing of claims see PARA 1025.

3 Limitation Act 1980 s 15(2). Thus, where a particular interest has been created with a reversion or remainder expectant on its determination, if a person without title obtains possession during the existence of the particular interest and remains in possession for 12 years, not only is the owner of the particular interest barred at the end of that time but the reversioner or remainderman is also barred unless he brings his claim within six years of the time when his reversion or remainder becomes an interest in possession. So if an owner in possession creates an interest for life with remainders over and the tenant for life is dispossessed and dies after being four years out of possession, the first remainderman has eight years from the death of the tenant for life in which to bring his claim.

As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1045, 1101.

4 Limitation Act 1980 Sch 1 para 13.

5 Limitation Act 1980 s 15(3).

6 *Re Earl of Devon's Settled Estates, White v Earl of Devon, Re Steer, Steer v Dobell* [1896] 2 Ch 562. It has been argued that should a remainderman himself die less than six years after the death of his dispossessed predecessor, the following remainderman has 12 years from the date of succession of the deceased

remainderman, which is the date when the right of action accrued to the person entitled to the preceding estate or interest in which to make his claim and thus more than the six years from his own succession (see Darby and Bosanquet's Statutes of Limitation (2nd Edn) 325); however, the point has not been decided.

7 *Pedder v Hunt* (1887) 18 QBD 565, CA. In such a case the grantee of the life interest is the person entitled to the preceding estate: *Pedder v Hunt* at 570, CA.

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1047. Assurance taking effect after accrual of right of action.

No person may bring a claim¹ to recover any estate or interest in unregistered land² under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed³ or some person entitled to a preceding estate or interest, unless the claim is brought within the period during which the person by whom the assurance was made could have brought such a claim⁴.

1 As to the meaning of 'claim' see PARA 915.

2 As to the meaning of 'land' see PARA 1018. As to the construction of references to the bringing of claims to recover land and to rights of action to recover land see PARA 1016.

3 As to the circumstances in which a person is deemed to claim through another person see PARA 1025.

4 Limitation Act 1980 s 15(4).

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1048. Merger.

If a tenant for life, while time is running against him, surrenders his interest¹ to the remainderman, the remainder is accelerated by the merger of the two interests and so falls into possession, but time will continue to run against the remainderman as it would have run against the tenant for life, save that the remainderman will have not less than six years before time expires². If, while time is running against a tenant for life, a remainderman conveys his remainder to him, the tenant for life will be barred in respect of the remainder also when time has run against him in respect of his life interest³, unless the life tenancy has merged in the remainder⁴, or unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest⁵.

1 See PARA 1044. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

2 See the Limitation Act 1980 s 15(2), to which Sch 1 para 4 is subject. See also s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and see PARAS 1044, 1046. Section 15(2) has no application where the preceding estate is a term of years absolute: see PARA 1046; cf PARA 1050. The periods are different if the succeeding interest belongs to the Crown or a spiritual or eleemosynary corporation sole: see Sch 1 para 13; and PARA 1046.

3 See the Limitation Act 1980 s 15(5) (to which Sch 1 para 4 is subject); s 18(1) (as amended: see note 2). This will not apply where the remainder is acquired after the life tenancy is barred: s 15(5); and see *Taylor v Twinberrow* [1930] 2 KB 16, DC.

4 In which case time runs as stated in the text and note 2. As to when there is a merger of a particular estate and an estate or interest in remainder see **EQUITY** vol 16(2) (Reissue) PARA 764 et seq; **REAL PROPERTY** vol 39(2) (Reissue) PARAS 255-257.

5 See note 3.

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1049. Conveyance by tenant for life and remainderman.

If, while time is running against a tenant for life, the tenant for life and remainderman concur in conveying the property by way of settlement¹ creating particular interests and remainders, and some of these interests are of such a nature that they are commensurate with and must take effect out of the interest of the tenant for life only, and all the rest must take effect out of the remainderman's interest, the owners of the class of interests taking effect out of the tenant for life's interest may be considered as claiming through the tenant for life only, and the owners of the class taking effect out of the remainderman's interest as claiming through the remainderman only, and time would run against their respective interests accordingly. If, however, the resettlement creates an interest in remainder which takes effect out of the interests of the tenant for life and remainderman jointly, it seems that time will not begin to run until the new interest in remainder takes effect in possession, as until then the merger of the two interests through which the new interest takes effect does not take place².

1 It must be noted that, subject to exceptions in the case of settlements created on the occasion of an alteration in interest in, or of a person becoming entitled under, a settlement which was in existence prior to 1 January 1997 or which derives from such a settlement, the Trusts of Land and Appointment of Trustees Act 1996 severely restricts the creation of settlements after that date: see s 2; and PARA 1022.

2 See *Doe d Curzon v Edmonds* (1840) 6 M & W 295. If a tenant for life and remainderman join in a conveyance or resettlement when the tenant for life has been so long out of possession that time has run against him, then the grant of the tenant for life can have no effect, as his title is already extinguished, and time runs against interests taking effect out of the remainder as if the remainderman had alienated an interest in remainder expectant on the determination of the life interest: *Doe d Curzon v Edmonds*.

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1050. Reversion on a lease.

If a lease is surrendered¹ and a new lease granted contemporaneously to the lessee, the reversion must be considered as falling into possession at the time of the renewal of the lease, and if a person without title has during the currency of the old lease obtained possession of the demised premises or any part of them, a right of action accrues to the reversioner at the date of the renewal and time runs against him from that date².

If there is no surrender and the lease determines by effluxion of time, and a trespasser is in possession of the demised premises, time begins to run against the reversioner from the expiration of the lease, and the grant by him of a fresh lease cannot avail him, as against the trespasser, if there is no possession against the trespasser under the fresh lease³. If a trespasser has during the currency of the lease acquired a title by adverse possession against the lessee, the lessor's right to bring ejectment against the trespasser accrues on the determination of the lease whether by effluxion of time or by surrender⁴, but the trespasser does not become an assignee of the term and has no right to relief from forfeiture⁵.

If a lease or tenancy merges in the freehold as a result of the tenant purchasing the landlord's reversion, a sub-tenant's rights acquired against the tenant under the statute of limitation are extinguished, and time begins to run against the new reversioner only from the date of the merger⁶.

1 As to the surrender of a lease see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 630 et seq.

2 *Ecclesiastical Comrs of England and Wales v Rowe* (1880) 5 App Cas 736, HL (distinguishing *Corpus Christi College, Oxford, President and Scholars v Rogers* (1879) 49 LJQB 4, CA); *Ecclesiastical Comrs for England v Treemer* [1893] 1 Ch 166; *East Stonehouse UDC v Willoughby Bros Ltd* [1902] 2 KB 318; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 638. If the trespasser has acquired a title by adverse possession against the lessee, the surrender of the lease is effective as against the trespasser and the lessor's right of action accrues at the time of the surrender: *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510, [1962] 2 All ER 288, HL.

3 See *Kennedy v Woods* (1868) IR 2 CL 436, Ex Ch. As to the effect of payment of rent to a person wrongfully claiming the reversion see PARA 1079.

4 *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510, [1962] 2 All ER 288, HL.

5 See *Tickner v Buzzacott* [1965] Ch 426, [1965] 1 All ER 131, where, unknown to the landlord, the tenant had died and his mistress paid the rent for over 12 years and then defaulted. If, knowing of the tenant's death, the landlord had accepted rent from the mistress, a new tenancy might have been inferred; however, it seems that the landlord could have refused the rent in the absence of any default and thus created an occasion for forfeiture (unless, perhaps, the tenancy was statutorily protected): see *Jessamine Investment Co v Schwartz* [1978] QB 264, [1976] 3 All ER 521, CA (decided under previous Rent Act legislation). See also PARAS 1066, 1089, 1098.

6 *Taylor v Twinberrow* [1930] 2 KB 16, DC.

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1051. Examples of future estates or interests.

If a tenant in tail conveys to a stranger by an assurance which is ineffectual to bar the issue, and possession is taken under that assurance, the right of the issue or remainderman to enter on the death of the tenant in tail is a future estate or interest within the meaning of the statute¹.

If land is limited to a husband and wife for their lives with remainder to the husband in fee, the right of the husband and his successors on his wife's death is also such a future estate or interest².

1 le within the meaning of the Limitation Act 1980 Sch 1 para 4: see PARA 1044; and *Cannon v Rimington* (1852) 12 CB 1. Entailed interests are only equitable interests: see the Law of Property Act 1925 ss 1(3), 130 (repealed by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and PARAS 1022, 1101. A tenant in tail in possession is a trustee of the legal estate of the property upon trust to give effect to his entailed interest: see PARA 1157 note 2. As to conveyances by trustees to a purchaser for value with or without notice of the trusts see PARA 1157. See generally **REAL PROPERTY**.

The Trusts of Land and Appointment of Trustees Act 1996 restricts the creation of entailed interests, such that any instrument coming into operation after 1 January 1997 purporting to create an entailed interest in real or personal property is not effective to grant an entailed interest: see s 2, Sch 1 para 5; and PARA 1101.

2 See *Doe d Johnson v Liversedge* (1843) 11 M & W 517.

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1052. Same person owning both present and future interests.

Where any person is entitled to any estate or interest¹ in unregistered land² in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under the Limitation Act 1980, no claim³ may be brought⁴ by that person, or by any person claiming through him⁵, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest⁶. The right to the future estate or interest is not barred unless the person entitled to the estate or interest in possession becomes entitled to the future estate or interest before the estate in possession has been barred; further, the right to the future estate is not barred unless the particular estate in possession has been actually barred, and that right is unaffected if the particular estate determines before the prescribed period has run out⁷.

1 See PARA 1044 notes 1-3. As to the severe restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

2 As to the meaning of 'land' see PARA 1018.

3 As to the meaning of 'claim' see PARA 915.

4 As to the construction of references to the bringing of claims to recover land see PARA 1016.

5 As to the circumstances in which a person is deemed to claim through another see PARA 1025.

6 Limitation Act 1980 s 15(5). If there are two successive tenants for life with remainder to the first in fee and, on the bar of the estate of the first tenant for life, the second tenant for life recovers possession, the property would on the death of the second tenant for life pass to the persons claiming under the first tenant for life; it is immaterial that the second tenant for life recovered possession otherwise than by legal proceedings: *Doe d Johnson v Liversedge* (1843) 11 M & W 517.

7 See *Doe d Johnson v Liversedge* (1843) 11 M & W 517; and *O'Regan v White* [1919] 2 IR 339, CA.

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1053. Ouster of tenant for life by succeeding tenant for life.

If a tenant for life¹ is ousted, not by a stranger, but by a succeeding tenant for life who retains possession for more than 12 years during the lifetime of the first tenant for life and then survives him and retains possession, the right of the persons claiming an interest in remainder will be preserved by the possession of the second tenant for life after the death of the first. The persons claiming an interest in remainder will have 12 years² from the death of the second tenant for life to assert their right, just as if the first tenant for life had been ousted by a stranger and the right of the remainderman had been preserved by the entry of the second tenant for life³.

1 Note the severe restrictions placed upon the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996: see PARAS 1022, 1101.

2 See the Limitation Act 1980 s 15(1); and PARA 1025.

3 See the Limitation Act 1980 s 15(5). See also *Doe d Johnson v Liversedge* (1843) 11 M & W 517; and PARA 1052 note 6.

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1054. Power of appointment.

If a tenant for life¹ has a power of appointment in remainder² after the determination of remainders expectant on the determination of his life interest and, at his death, time has run against his life interest, the exercise of his power of appointment by will is not affected³.

1 Note the severe restrictions placed upon the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996: see PARAS 1022, 1101.

2 See PARA 1044.

3 *Re Earl of Devon's Settled Estates, White v Earl of Devon, Re Steer, Steer v Dobell* [1896] 2 Ch 562. The appointees in such a case will not be barred under the Limitation Act 1980 s 15(1): see PARA 1025.

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1055. Particular estate and reversion vested without merger.

If an interest *pur autre vie*¹ and the reversion expectant on the determination of that interest become vested in the same person, and he does not take possession, then, even though no merger may take place, he, or anyone claiming through him, is barred at the end of 12 years² from the time when the two interests became vested in him³.

1 As to 'interests *pur autre vie*' see **REAL PROPERTY** vol 39(2) (Reissue) paras 151-156. Note the severe restrictions placed upon the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996: see **PARAS** 1022, 1101.

2 See the Limitation Act 1980 s 15(1); and **PARA** 1025.

3 *Doe d Hall v Moulsdale* (1847) 16 M & W 689; and see *Poole v Griffith* (1864) 15 ICLR 239 at 292, Ex Ch, per Pigot CB.

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1056. Gift over on two conditions.

If unregistered land is devised to a person subject to a gift over on the happening of either of two events, and both events happen, time runs from the happening of the first event, and a claim brought more than 12 years after the happening of the first event is barred, even if it is brought less than 12 years after the happening of the second event¹.

¹ *Clarke v Clarke* (1868) IR 2 CL 395, following *Doe d Hall v Mouldsdale* (1847) 16 M & W 689; cf *Astley v Earl of Essex* (1874) LR 18 Eq 290; and see PARA 1076. As to the severe restrictions placed upon the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

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C. TENANCIES

(A) INTRODUCTION

1057. General limitation.

Under the Limitation Act 1980, time does not run against the landlord in the tenant's favour during the subsistence of the term of a tenancy however long the rent may remain unpaid, as the grant of the term converts the landlord's right to possession into a future interest and his right of action to recover the land is accordingly deemed to have accrued on the date on which the preceding interest (that is, the tenancy) determined¹. Special provision is made for claims to recover rent².

¹ See the Limitation Act 1980 Sch 1 para 4; and PARA 1044. See also *Grant v Ellis* (1841) 9 M & W 113 (where the rent had been unpaid for over 20 years); and *Barrett v Richardson and Cresswell* [1930] 1 KB 686 at 692, 693.

² See the Limitation Act 1980 s 19; and PARA 1033. As to the creation and nature of tenancies generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) para 198 et seq.

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(B) TENANCIES FROM YEAR TO YEAR OR OTHER PERIOD WITHOUT WRITTEN LEASE

1058. Tenancy from year to year etc.

For the purposes of the Limitation Act 1980, a tenancy from year to year or other period, without a lease in writing¹, is deemed to be determined at the expiration of the first year or other period; and accordingly the right of action² of the person entitled to the land subject to the tenancy is deemed to accrue at the date of the determination³. Where, however, any rent⁴ has subsequently been received in respect of the tenancy⁵, the right of action is deemed to accrue on the date of the last receipt of rent⁶.

1 A lease in writing must be an instrument in writing which operates as a lease and creates an interest in land and must be binding on the lessor; a rent book entry which is evidence of the terms of the holding or which binds the tenant only is not sufficient: see *Doe d Lansdell v Gower* (1851) 17 QB 589; *Moses v Lovegrove* [1952] 2 QB 533 at 536, [1952] 1 All ER 1279 at 1280, CA; and *Long v Tower Hamlets London Borough Council* [1998] Ch 197 at 208-210, [1996] 2 All ER 683 at 692-694.

2 As to the construction of references to rights of action to recover land see PARA 1016.

3 Limitation Act 1980 Sch 1 para 5(1). See also *Mason v Warlow* [1941] 1 All ER 475, CA; *Hayward v Chaloner* [1968] 1 QB 107, [1967] 3 All ER 122, CA; and *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA.

The words 'without a lease in writing' apply to a person holding as tenant from year to year as well as to a person holding for any other period. A weekly tenancy is a 'tenancy from year to year or other period' and the fact that a contractual weekly tenancy has been transformed into a statutory tenancy under the Rent Acts is immaterial; the landlord's right of action accrues within the Limitation Act 1980 s 15(1), (6), Sch 1 para 5 following the tenant's non-payment of rent even though the Rent Acts impose restrictions on the exercise of that right: see *Jessamine Investment Co v Schwartz* [1978] QB 264, [1976] 3 All ER 521, CA.

As to the position of a tenant holding under an agreement for a lease of which specific performance would be decreed see **LANDLORD AND TENANT**. Where a tenant made repayments in respect of tithes to the landlord's agent during the whole term and after the determination of his tenancy, but never paid any rent during the whole period of his occupation, it was held that a new tenancy from year to year must be inferred, and that the landlord's title was not barred: *Neall v Beadle* (1912) 107 LT 646. If a tenant is in adverse possession, the character of his possession is not altered, so as to prevent time continuing to run, by the fact that a statute is passed restricting the landlord's right to recover possession: see *Moses v Lovegrove* [1952] 2 QB 533, [1952] 1 All ER 1279, CA, where the premises were brought into control under the Rent Acts.

A tenancy from year to year or any other tenancy for a recurring period created under a lease in writing is governed not by the Limitation Act 1980 Sch 1 para 5(1), but, provided a rent of not less than £10 is reserved, by Sch 1 para 6: see PARA 1063.

4 As to the meaning of 'rent' see PARA 1020. See also *Baines v Lumley* (1868) 16 WR 674; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARAS 242, 862.

5 The words 'rent has subsequently been received in respect of the tenancy' refer to an existing tenancy and not to a tenancy which has been extinguished: *Nicholson v England* [1926] 2 KB 93 at 108, DC.

6 Limitation Act 1980 Sch 1 para 5(2).

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1059. Payment of rent.

Where a certain sum is due periodically from a tenant from year to year by way of rent¹, and it is proved that a similar sum has been paid from time to time, those payments will not prevent time running unless they were made as rent².

A payment of rent made after the tenancy has been extinguished on the expiration of the statutory limitation period does not revive the tenancy so as to enable the reversioner to rely on the payment as excluding the operation of the statute of limitation³.

To prevent time running, rent must actually be paid, and it is insufficient to show a notional payment counterbalanced by a notional refund as a charitable donation⁴.

1 As to the nature of rent reserved see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 242. Cf the meaning of 'rent' in PARA 1020.

2 *A-G v Stephens* (1855) 6 De GM & G 111 at 136 per Lord Cranworth LC. Payment of rent may be proved by the tenant's oral admission: *Doe d Earl Spencer v Beckett* (1843) 4 QB 601.

3 *Nicholson v England* [1926] 2 KB 93, DC; *Sanders v Sanders* (1881) 19 ChD 373, CA. See also the Limitation Act 1980 Sch 1 para 5.

4 *Hayward v Chaloner* [1968] 1 QB 107, [1967] 3 All ER 122, CA, where land had been let to a rector as corporation sole and it was established that if the rector for the time being had paid the rent it would have been refunded for the benefit of his church.

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1060. Payment of head rent by sub-tenant.

If a sub-tenant who is in possession of land pays without compulsion to the superior landlord the rent due from the mesne tenant, that payment of itself does not amount to a payment of rent to the mesne tenant unless there are facts to show that the sub-tenant paid the rent by some arrangement with his immediate landlord¹. If a claim is brought to recover unregistered land from a person who is in possession, and the claimant proves that another person paid rent within 12 years and that the defendant within 12 years had admitted that he held as tenant to the person who paid the rent but there is no evidence of payment of rent by the defendant to anyone, the claimant is entitled to recover on the ground that a sub-tenant cannot be permitted to dispute a title which is valid against the person of whom he holds².

1 *Grogan v Regan* [1902] 2 IR 196, CA. As to underleases generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 107.

2 *Doe d Earl Spencer v Beckett* (1843) 4 QB 601. See **ESTOPPEL** vol 16(2) (Reissue) PARA 1037.

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1061. Agent receiving rent.

If a person originally receives rent as agent for the true owner and continues to receive it, but for more than 12 years pays nothing over to the true owner, payment of rent to that person is payment to the true owner until the character in which that person receives the rent is proved to have changed¹.

¹ *Smith v Bennett* (1874) 30 LT 100; *A-G v London Corp'n* (1850) 2 Mac & G 247; and see *Lyell v Kennedy*, *Kennedy v Lyell* (1889) 14 App Cas 437, HL; *Re Hobbs*, *Hobbs v Wade* (1887) 36 ChD 553; *M'Auliffe v Fitzsimons* (1889) 26 LR Ir 29.

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(C) TENANCIES UNDER LEASES IN WRITING

1062. Effect of non-payment of rent.

Where land has been demised for a term of years at a rent reserved, the landlord's title to the reversion expectant on the lease is unaffected by the mere fact that the tenant omits to pay rent for any number of years during the existence of the lease¹, even if the tenant himself claims the reversion². In the case of a tenancy from year to year under a lease in writing³, the non-payment for many years of rent reserved, coupled with absence of proof of any rent being demanded, is of itself evidence from which the determination of the tenancy may be inferred. In such a case, in order to establish a defence under the statute of limitation, the occupier must prove that such length of time had elapsed, without payment or demand of rent, as to warrant the inference that the tenancy had been determined 12 years or more before the commencement of proceedings⁴.

1 See PARA 1057.

2 *Archbold v Scully* (1861) 9 HL Cas 360.

3 As to what constitutes a lease in writing for the purposes of the Limitation Act 1980 Sch 1 para 5 see *Moses v Lovegrove* [1952] 2 QB 533, [1952] 1 All ER 1279, CA; *Long v Tower Hamlets London Borough Council* [1998] Ch 197, [1996] 2 All ER 683; and PARA 1058 note 3.

4 *Stagg v Wyatt* (1838) 2 Jur 892; *Jackson v M'Master* (1890) 28 LR Ir 176, CA; cf *Molony v Molony* [1894] 2 IR 1; *Mulcaire v Lane-Joynt* (1893) 32 LR Ir 683, CA; *Neall v Beadle* (1912) 107 LT 646.

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1063. Rent paid to person other than true reversioner.

Where any person is in possession of land by virtue of a lease in writing¹ by which a rent² of not less than £10 a year is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease and no rent is subsequently received by the person rightfully entitled to that rent, then under the Limitation Act 1980 the right of action to recover the land³ of the person rightfully so entitled is deemed to have accrued on the date when the rent was first received by the person wrongfully claiming, and not at the date of the determination of the lease⁴. This, however, does not apply to a lease granted by the Crown⁵. The receipt of rent by a person wrongfully claiming the reversion is deemed to be adverse possession of the land⁶.

If a person wrongfully claiming the reversion receives rent for a period less than 12 years and then ceases to receive the rent and makes no claim to receive it, then, although the rightful owner does not receive rent for 12 years, he will not, it seems, be time-barred⁷.

1 As to the meaning of 'lease in writing' see PARA 1058 note 3.

2 As to the meaning of 'rent' see PARA 1020.

3 As to the construction of references to rights of action to recover land see PARA 1016.

4 Limitation Act 1980 Sch 1 para 6(1).

5 Limitation Act 1980 Sch 1 para 6(2).

6 See the Limitation Act 1980 Sch 1 para 8(3)(b); and PARA 1079.

7 See *Trustees, Executors and Agency Co Ltd and Templeton v Short* (1888) 13 App Cas 793, PC; and PARA 1064.

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1064. Possession by wrongful claimant during term.

If no rent is paid to a wrongful claimant, but during the currency of the lease a person obtains possession and claims to be entitled to the estate in fee simple in the land, time will run against the reversioner only from the determination of the lease¹. Where, however, within the statutory limitation period² before the expiration of the lease, the rent has been received by a person wrongfully claiming the reversion who also obtains possession of the land at the expiration of the lease and retains it until that period of years³ from his first receipt of rent is completed, the rightful reversioner's right to recover possession is deemed to have accrued at the time of the first receipt of rent by the wrongful claimant and in the case of unregistered land his title will accordingly be barred⁴.

1 *Chadwick v Broadwood* (1840) 3 Beav 308 at 316.

2 I.e 12 years in the case of unregistered land: see PARA 1025.

3 See note 2.

4 See *Marquis of Cholmondeley v Lord Clinton* (1823) Turn & R 107.

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1065. Claim must be wrongful and adverse.

The receipt of rent by a person other than the reversioner will not cause time to run unless that person's claim is wrongful and adverse to the rightful reversioner¹. If the reversion is severed and portions of the land out of which the rent under the lease issued are conveyed to another person, and there is no apportionment but the whole of the rent is paid as before to the original reversioner, there is no wrongful possession and time does not begin to run against the person to whom the portions of the land were conveyed until the lease expires².

The words 'wrongfully claiming'³ refer not only to an intentional and improper claim to the rent but also to a claim made by mistake and to the case of any person not entitled who makes a claim to the rent against a person who is entitled. Thus, if a person receives the rents of property to which he is entitled, but by mistake accounts for them to another person who is not entitled, the receipt of the rents by that other person is a receipt by a person 'wrongfully claiming' to be entitled⁴.

¹ *Sloane v Flood* (1855) 5 ICLR 75; and see *Shaw v Keighron* (1869) 3 IR Eq 574 (receipt of rent by widow entitled to jointure).

² See *Laybourn v Gridley* (1892) 61 LJ Ch 352; *Williams v Pott* (1871) LR 12 Eq 149; and *Mitchell v Mosley* [1914] 1 Ch 438, CA. As to the apportionment of rent reserved see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 278 et seq.

³ See the Limitation Act 1980 Sch 1 para 6(1); and PARA 1063.

⁴ *Williams v Pott* (1871) LR 12 Eq 149.

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1066. Sub-lessee paying head rent.

If land is in the occupation of a sub-tenant who pays the head rent to the superior landlord, but nothing is either received or paid by the mesne lessee, then, it seems, the receipt of rent by the superior landlord may be, although it will not necessarily be, adverse to the title of the mesne lessee¹; and the claim of the mesne lessee will be barred unless it can be inferred that that payment was made under an arrangement between him and the sub-lessee². If the sub-lessee purchases the freehold reversion but neither makes any payment of the rent due in respect of the underlease nor applies to the mesne lessee for the head rent, time will not run against the title of the mesne lessee³.

1 *Drew v Earl of Norbury* (1846) 3 Jo & Lat 267; *Doe d Newman v Godsill* (1840) 4 QB 603n.

2 See *Grogan v Regan* [1902] 2 IR 196, CA.

3 *Hayes v Woodley* (1852) 3 I Ch R 142.

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1067. Position between lessor and sub-lessee where mesne landlord barred.

A superior landlord's reversion on the expiry of a head lease has been held not to be extinguished by the barring of the mesne landlord's reversion to the tenancy of his sub-lessee; if the mesne landlord's reversion is extinguished, the sub-tenant appears nevertheless to remain a sub-tenant, so far as the superior landlord is concerned, during the residue of the original term of years; the character of the sub-lessee's tenancy seems not to change and, as against the superior landlord, he may continue to hold a statutorily protected tenancy¹ after the expiry of the head lease².

1 le a statutory tenancy under the Rent Act 1977 or a statutory periodic tenancy under the Housing Act 1988. See also **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 831 et seq.

2 *Jessamine Investment Co v Schwartz* [1978] QB 264, [1976] 3 All ER 521, CA. This case was decided under the Rent Act 1968 (repealed).

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(D) TENANCIES AT WILL

1068. Tenancies at will.

The Limitation Act 1980 makes no specific provision for tenancies at will¹. Accordingly, in the case of a tenancy at will, time cannot begin to run until the actual termination of the tenancy².

¹ For the purposes of the Limitation Act 1939 (repealed), a tenancy at will was deemed to be determined at the expiration of one year from its commencement, unless it had previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy was deemed to have accrued on the date of such determination: s 9(1) (repealed). This provision did not apply to a tenancy at will granted by the Crown: s 9(4) (repealed).

² See PARA 1057. A tenancy at will may be determined by either party expressly or impliedly intimating to the other the wish for the tenancy to end; the tenant's notice to determine will not be effective unless he actually gives up possession: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 202-205. See also *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA (decided under the Limitation Act 1939 (repealed)); and PARA 1078.

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1069. Tenancies for undefined periods.

The old common law presumption of a yearly tenancy arising by entry upon premises with payment of rent by reference to a yearly holding seldom now arises¹. The fundamental question in each case is with what intent the rent was received and what was the real intent of the parties². If one party permits another to enter into or remain in possession of his land upon payment of rent with reference to a yearly holding, failing more, the inference reasonably to be drawn is that the parties intended a yearly tenancy³. The parties may however agree to create a tenancy at will with a rent reserved⁴. Thus time will run as in relation to a yearly tenancy or tenancy at will as the case may be⁵.

1 See *Longrigg, Burrough and Tounson v Smith* (1979) 251 Estates Gazette 847 at 849, CA, per Ormerod LJ; *Javad v Aqil* [1991] 1 All ER 243 at 252, [1991] 1 WLR 1007 at 1017, CA, per Nicholls LJ; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 209.

2 See *Doe d Cheny v Batten* (1775) 1 Cowp 243 at 245 per Lord Mansfield CJ, cited in *Javad v Aqil* [1991] 1 All ER 243 at 248-249, [1991] 1 WLR 1007 at 1013, CA; *Land v Sykes* [1992] 1 EGLR 1 at 4, CA; *Clarke v Grant* [1950] 1 KB 104 at 106, [1949] 1 All ER 768 at 769, CA; and *Dealex Properties Ltd v Brookes* [1966] 1 QB 542 at 550, [1965] 1 All ER 1080 at 1082, CA, per Harman LJ.

3 *Javad v Aqil* [1991] 1 All ER 243 at 248, [1991] 1 WLR 1007 at 1012, CA. As to the nature of tenancies from year to year see generally **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) para 208 et seq.

4 See *Hodgson v Hooper* (1860) 3 E & E 149.

5 As to tenancies at will see PARA 1068. As to tenancies from year to year see PARAS 1058-1061.

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1070. Entry under void lease.

If a person enters on land under a lease which should be, but is not, by deed¹, a tenancy at will may be created². If however, a person enters on land under a lease which is void from the outset and pays no rent, he is not a tenant at will but is in possession without any title, and time runs in his favour from the date of his entry; but if any rent, however small, is reserved by the lease and paid by him, time will not run as long as those payments are made³.

1 As to the leases which must be by deed see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 79.

2 See *Goodtitle d Gallaway v Herbert* (1792) 4 Term Rep 680; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 198 et seq.

3 *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324 at 335, HL, per Lord Selborne; *Bunting v Sargent* (1879) 13 ChD 330; *Webster v Southey* (1887) 36 ChD 9.

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1071. Possession by licensee.

Where the occupier of premises is in possession by the owner's will, his occupation may not be an independent possession by him but the possession of the owner himself, so that the owner is in possession through the occupier as his licensee. Such a case may arise where the occupier is the owner's employee and merely occupies in his capacity of, and for the purpose of performing his duties as, an employee¹, or where the occupier is a mere guest of the owner², or where the owner is under a legal obligation to provide a home for the occupier³.

Where a person is in occupation of premises and is negotiating with the owner with a view to buying them, he may have either an express or implied licence; in either case he is in occupation with the owner's consent so as to prevent time from running during the period of the licence⁴.

1 *Ellis' Lessee v Crawford* (1842) 5 ILR 402 at 404 per Pennefather B; *Moore's Lessee v Doherty* (1843) 5 ILR 449 (schoolmaster); *Jack v Walsh* (1842) 4 ILR 254; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 15. As to occupation by a mere licensee see *Wimbledon and Putney Commons Conservators v Nicol* (1894) 10 TLR 247; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 6-16.

2 *Peakin v Peakin* [1895] 2 IR 359, distinguishing *Doe d Dayman v Moore* (1846) 9 QB 555. See also *Heslop v Burns* [1974] 3 All ER 406, [1974] 1 WLR 1241, CA, where the owner recorded a fictitious rent, and even paid tax on it, but it was held that in the light of the relationship between the parties there was a licence, not a tenancy at will. As to the doctrine of adverse possession see PARA 1078.

3 *Keelan v Garvey* [1925] 1 IR 1, CA, where, although the owner of a holding on which he and his wife lived left the holding and did not return to it until after his wife's death some 25 years later, it was held that the husband never ceased to be in, and that the wife never entered into, possession of the holding.

4 See *BP Properties Ltd v Buckler* (1987) 55 P & CR 337, [1987] 2 EGLR 168, CA (express licence); *Bath and North East Somerset District Council v Nicholson* [2002] EWHC 674 (Ch), [2002] All ER (D) 327 (Feb), [2002] 10 EG 156 (CS); *Colin Dawson Windows Ltd v Howard* [2005] EWCA Civ 09, [2005] All ER (D) 148 (Jan) (implied licences). See also *Sandhu v Farooqui* [2003] EWCA Civ 531, [2003] HLR 817, [2003] All ER (D) 09 (Mar).

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D. RENTCHARGES

1072. Possession of rentcharges.

In the Limitation Act 1980 'land' includes rentcharges¹, and time runs in their case as for other forms of land². In the case of rentcharges, references in the 1980 Act to the possession of land are construed as references to the receipt of the rent³, and references to the date of dispossession or discontinuance of the possession of land are construed as references to the date of the last receipt of rent⁴. Time does not begin to run, however, until there is adverse possession⁵. The period for which arrears of a rentcharge may be recovered, in a case where the title to the rentcharge has not been extinguished, has been considered earlier⁶.

The creation of new rentcharges is now mainly prohibited under the Rentcharges Act 1977 and existing rentcharges are to be extinguished by 2037⁷.

1 See PARA 1018. As to the meaning of 'rentcharge' see PARA 1020.

2 For the periods of limitation applicable in particular cases see the Limitation Act 1980 ss 15-19; and PARAS 1025-1028, 1033. As to the accrual of the right of action see Sch 1 paras 1-3 (present interests: see PARAS 1034-1043); Sch 1 para 4 (future interests: see PARAS 1044-1056). As to the extinction of title on the expiration of the period of limitation see s 17; and PARA 1095. These periods do not apply to registered rentcharges: see PARAS 1029, 1032.

3 As to the meaning of 'rent' see PARA 1020.

4 See the Limitation Act 1980 s 38(8). As to the construction of references to a right of action to recover land or the bringing of a claim see PARA 1016.

In the case of the discontinuance of the receipt of rent, this provision makes the time begin to run before any right to make an entry or distress or to bring a claim has actually accrued: *Owen v De Beauvoir* (1847) 16 M & W 547 (affd sub nom *De Beauvoir v Owen* (1850) 5 Exch 166). In that case (decided when the relevant period of limitation was 20 years) the last payment of rent was on 15 January 1825; six years' arrears, up to 24 September 1844, were distrained for on 13 May 1845, and it was held that the distress was unlawful. As to the prospective abolition of the common law right to distrain for arrears of rent see the Tribunals, Courts and Enforcement Act 2007 s 71 (not yet in force).

5 See the Limitation Act 1980 Sch 1 para 8; and PARA 1078.

6 See PARA 1033.

7 See the Rentcharges Act 1977 ss 2, 3; and **RENTCHARGES AND ANNUITIES** vol 39(2) (Reissue) PARAS 751, 774, 894.

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1073. Arrears of extinguished rentcharge.

A distress¹ made subsequent to the extinguishment of a rentcharge is unlawful, and in every case in which rent is extinguished by the operation of the statute of limitation, no arrears accruing due before the day on which the extinguishment takes effect may be recovered after that day².

1 As to the prospective abolition of the common law right to distrain for arrears of rent see the Tribunals, Courts and Enforcement Act 2007 s 71 (not yet in force).

2 *De Beauvoir v Owen* (1850) 5 Exch 166. In that case, the reason given for the court's decision was that, 'rent service' having become extinguished, no tenure in respect of the rent existed at the time of the distress: see *De Beauvoir v Owen* at 177. In the case of a rentcharge or rent-seck, where the right of distress depends on either contract or statute (see the Landlord and Tenant Act 1730 s 5; the Law of Property Act 1925 s 121(2) (both prospectively repealed by the Tribunals, Courts and Enforcement Act 2007 Sch 14 paras 3, 21, 23, Sch 23 Pt 4, as from a day to be appointed under s 148(5); at the date at which this volume states the law, no such day had been appointed and those repeals were not in force); and **DISTRESS** vol 13 (Reissue) PARAS 901-906; **RENTCHARGES AND ANNUITIES**), it might be argued that this reasoning does not apply, but it seems that the principle laid down in *De Beauvoir v Owen* applies to every kind of rent as an inheritance: see *Re Maunsell's Estate* [1911] 1 IR 271. See also PARA 1072 text and note 7.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iii) Accrual of the Cause of Action under the Limitation Act 1980/D. RENTCHARGES/1074. Discontinuance of possession.

1074. Discontinuance of possession.

To constitute a discontinuance of the receipt of rent, there must be an omission by the person entitled in not applying for the rent or neglecting to enforce his remedies with knowledge that payment has not been made¹.

Where land subject to an unregistered rentcharge is divided and comes into the occupation of different persons, and the rentcharge is paid by the occupier of one part of the land and the occupier of another part does not make any payment or acknowledgment and is not distrained on² for more than 12 years, there is no dispossession of the owner of the rentcharge as regards the part in respect of which no payment has been made by the occupier, for a rentcharge is entire and issues out of all and every portion of the premises charged³. Again, where for a long series of years a rentcharge is paid, not by the owner of the land charged but by some other person, the court in some cases presumes a lost grant or agreement having the effect of preserving the rights of the owner of the rentcharge against the land charged⁴.

1 See *Adnam v Earl of Sandwich* (1877) 2 QBD 485, where payment by a vendor of the land charged preserved the right against the land; *Archbishop of Dublin v Coote and Lord Trimleston* (1849) 12 I Eq R 251. Payment by a tenant likewise preserves the right: see *Bowen v Dillwyn-Venables-Llewelyn* (1958) Times, 3 July, 172 Estates Gazette 77, CA. As to possession of land generally see PARA 1078 et seq.

2 As to the prospective abolition of the common law right to distrain for arrears of rent see the Tribunals, Courts and Enforcement Act 2007 s 71 (not yet in force).

3 *Woodcock v Titterton* (1864) 12 WR 865; *Conolly v Gorman* [1898] 1 IR 20, CA.

4 *Adnam v Earl of Sandwich* (1877) 2 QBD 485 at 491 (payment by a former owner); *Bowen v Dillwyn-Venables-Llewelyn* (1958) Times, 3 July, 172 Estates Gazette 77, CA (payment by tenant); cf *Re Bomford's Estate, Bomford v Neville* [1904] 1 IR 474, CA; *Foley's Charity Trustees v Dudley Corpn* [1910] 1 KB 317, CA. In *Adnam v Earl of Sandwich*, the preservation of the rights of the owner of the rentcharge against the land was based alternatively on his ignorance, having regard to which it was said that the court could not hold him guilty of any default: see *Irish Land Commission v White* [1896] 2 IR 410. This doctrine seems doubtful, as ignorance does not prevent the operation of the statute: *Dawkins v Lord Penrhyn* (1877) 6 ChD 318 at 324, CA; *Rains v Buxton* (1880) 14 ChD 537.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iii) Accrual of the Cause of Action under
the Limitation Act 1980/D. RENTCHARGES/1075. Failure to take possession.

1075. Failure to take possession.

Where no payment of rent has ever been made and thus the owner of the rentcharge has not taken possession¹, time runs from the date on which the right to recover the earliest instalment first accrued².

1 As to possession of rentcharges see PARA 1072.

2 *James v Salter* (1837) 3 Bing NC 544 at 553; *Sykes v Williams* [1933] Ch 285, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iii) Accrual of the Cause of Action under the Limitation Act 1980/E. FORFEITURE AND BREACH OF CONDITION/1076. General rule as to forfeiture.

E. FORFEITURE AND BREACH OF CONDITION

1076. General rule as to forfeiture.

A right of action to recover land¹ by virtue of a forfeiture or breach of condition is deemed to have accrued on the date on which the forfeiture was incurred or the condition broken². If, however, such a right has accrued to a person entitled to an estate or interest in reversion or remainder³ and the land was not recovered by virtue of that right⁴, the right of action to recover the land is not deemed to have accrued to the person so entitled until his estate or interest falls into possession, as if no such forfeiture or breach of condition had occurred⁵.

These rules apply to every forfeiture or breach of condition, and not merely to cases between landlord and tenant⁶; so the remainderman's right is preserved where, by the terms of a conditional limitation, on the breach of a condition, the previous interest is expressed to come to an end and the remainderman's interest to fall into possession⁷.

1 As to the construction of references to a right of action to recover land see the Limitation Act 1980 s 38(7); and PARA 1016. As to the meaning of 'land' see PARA 1018.

2 Limitation Act 1980 Sch 1 para 7(1).

3 As to interests in reversion or remainder see PARA 1044.

4 Ie the reversioner or remainderman has not taken immediate steps to recover the land, as he may do if he prefers.

5 Limitation Act 1980 Sch 1 para 7(2).

6 *Doe d Hall v Moultsdale* (1847) 16 M & W 689; and see *Whitton v Peacock* (1834) 3 My & K 325; *Doe d Cook v Danvers* (1806) 7 East 299; *Doe d Allen v Blakeway* (1833) 5 C & P 563. As to forfeiture in the case of landlord and tenant see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 603 et seq. As to forfeiture generally see further **REAL PROPERTY** vol 39(2) (Reissue) PARA 253.

7 See the Limitation Act 1980 Sch 1 para 7; *Astley v Earl of Essex* (1874) LR 18 Eq 290; and *Connolly v Leahy* [1899] 2 IR 344; cf *Clarke v Clarke* (1868) IR 2 CL 395.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iii) Accrual of the Cause of Action under the Limitation Act 1980/E. FORFEITURE AND BREACH OF CONDITION/1077. Reversioner's right in case of lease.

1077. Reversioner's right in case of lease.

Even if no rent has been paid for upwards of 12 years before the expiration of an unregistered lease, the reversioner has, notwithstanding, 12 years from the determination of the lease in which to recover possession¹. The rule is the same even if the lease contains a proviso for re-entry on non-payment of rent².

¹ See PARA 1062. See also *Doe d Davy v Oxenham* (1840) 7 M & W 131. As to recovery of possession by a landlord against his tenant see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 650 et seq.

² See the Limitation Act 1980 Sch 1 para 7. In such a case the omission to enforce one forfeiture does not prejudice the right to enforce a subsequent one, and, as the lease remains in existence until a forfeiture is actually enforced, a fresh right to enter accrues, and therefore time begins to run afresh every time a fresh default in payment is made: *Barratt v Richardson and Cresswell* [1930] 1 KB 686; and see *Sykes v Williams* [1932] 2 Ch 190 (revsd on related grounds [1933] Ch 285, CA).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1078. Meaning and effect of 'adverse possession'.

(iv) Possession of Land

1078. Meaning and effect of 'adverse possession'.

No right of action to recover land¹ accrues unless the land is in the possession² of some person in whose favour the period of limitation can run (adverse possession); and where under the provisions of the Limitation Act 1980³ any right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action does not accrue unless and until adverse possession is taken of the land⁴. Time therefore cannot begin to run unless and until the true owner ceases to be in possession of his land⁵.

What constitutes adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used; there is no general principle that, to establish possession of an area of land, the claimant must show that he made physical use of the whole of it⁶. However, for the claimant's possession of the land to be adverse, so as to start time running against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession on his own behalf and for his own benefit⁷. Where the occupier's possession of the land is by permission of the owner, that possession cannot be adverse⁸ and possession is never adverse if it is enjoyed under a lawful title⁹. However, for the purpose of determining whether a person occupying any land is in adverse possession of the land it is not assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land¹⁰. A claim to prescriptive rights to easements may be so extensive as to amount practically to a claim to the whole beneficial user of the servient tenement, in which case it can only succeed as a claim to adverse possession of the land itself¹¹. Occupation of land as a licensee is not adverse possession¹².

A person is in adverse possession of an estate in land¹³ for the purposes of the Land Registration Act 2002¹⁴ if, but for its disapplication by the Land Registration Act 2002¹⁵, a period of limitation under the Limitation Act 1980¹⁶ would run in his favour¹⁷ in relation to the estate¹⁸. A person is also to be regarded for those purposes as having been in adverse possession of an estate in land:

- 123 (1) where he is the successor in title to an estate in the land, during any period of adverse possession by a predecessor in title to that estate¹⁹; or
- 124 (2) during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own²⁰.

A person is not, however, to be regarded as being in adverse possession of an estate for the purposes of the 2002 Act at any time when the estate is subject to a trust, unless the interest of each of the beneficiaries in the estate is an interest in possession²¹. Similar principles apply for determining whether a person is in adverse possession of a registered rentcharge²².

1 As to the construction of references to a right of action to recover land see the Limitation Act 1980 s 38(7); and PARA 1016. As to the meaning of 'land' see PARA 1018. As to the enforcement of a judgment for the recovery of possession of land see **CIVIL PROCEDURE** vol 12 (2009) PARA 1247; and as to claims by a landlord against a tenant for recovery of land see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 650 et seq.

2 As to the meaning of 'possession' in relation to unregistered rentcharges see PARA 1072.

3 le under the Limitation Act 1980 Sch 1 paras 1-7.

4 Limitation Act 1980 Sch 1 para 8(1). Where a tenant's possession has become adverse, the fact that the landlord's right to recover possession is subsequently restricted by statute does not seem to affect the nature of the tenant's possession: see PARA 1067. A purchaser in possession of the land purchased, after having paid the purchase price, is a person in whose favour the period of limitation can run within Sch 1 para 8 as against the vendor: *Bridges v Mees* [1957] Ch 475 at 484, [1957] 2 All ER 577 at 580. Where, however, a purchaser is let into possession on terms that he pays the price by instalments subject to the vendor's right to rescind and re-enter on non-payment, the vendor's right to possession only arises when he actually rescinds, whatever the length of the default in payment, and meanwhile the purchaser's possession is not adverse: see *Lakshmijit s/o Bhai Suchit v Faiz Mohammed Khan Sherani (as administrator for estate of Shahbaz Khan)* [1974] AC 605, [1973] 3 All ER 737, PC. For possession to be adverse, it is not necessary that the owner be inconvenienced or otherwise affected by that possession: *Treloar v Nute* [1977] 1 All ER 230, [1976] 1 WLR 1295, CA. See *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85, [1999] All ER (D) 55, CA (wall acquired by adverse possession following a number of modifications made since 1957). See also *Smith v Lawson* (1998) 75 P & CR 466, [1997] NPC 87, CA (no adverse possession by a tenant whose landlord is estopped from seeking repossession after a promise not to collect any further rent). In a claim for recovery of land, previous legal proceedings which are unsuccessful do not prevent time running in favour of the person in adverse possession: *Markfield Investments Ltd v Evans* [2001] 2 All ER 238, [2001] 1 WLR 1321, CA. A mortgagee may lose its right to recover the mortgaged property by the mortgagor's adverse possession: *Ashe v National Westminster Bank plc* [2008] EWCA Civ 55, [2008] 1 WLR 710, [2008] All ER (D) 128 (Feb).

5 Where a purchaser in possession of the land sold pays the purchase price but no transfer is made, his possession becomes adverse to that of the vendor, who becomes a bare trustee for him, and in the case of unregistered land the vendor's title will be extinguished after 12 years: see *Bridges v Mees* [1957] Ch 475, [1957] 2 All ER 577. As to where there is no evidence that the owner of land has ever entered into possession see *Gibbs v Hambrook* (1955) 166 Estates Gazette 629. Where an occupier of land enters into negotiations with the owner, but those negotiations subsequently fail, the occupier's possession will become adverse from the date of termination of the negotiations: *Bellew v Bellew* [1982] IR 447, Ir Sup Ct.

6 See *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA; and *Kenneth McKinney Higgs (substituted for Clotilda Eugenie Higgs) v Nassauvian Ltd* [1975] AC 464, [1975] 1 All ER 95, PC, where land in the Bahamas was farmed on a rotational basis. See also *Lambeth London Borough Council v Bigden* [2000] EWCA Civ 302, (2000) 33 HLR 43, sub nom *Bigden v Lambeth London Borough Council* [2000] All ER (D) 2076 (possession of keys to street entrances of different estate blocks over period of time by various individuals; no joint possession of entire estate); and *Tennant v Adamczyk* [2005] EWCA Civ 1239, [2006] 1 P & CR 485, [2005] All ER (D) 29 (Oct) (use of land for parking and unloading vehicles did not amount to adverse possession).

7 The claimant must show that he had the requisite intention to possess the land to the exclusion of all other persons including the owner with the paper title so far as is reasonably practicable and so far as the process of the law will allow: see *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA; applied in *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865. See also Application 44302/02 *JA Pye (Oxford) Ltd v United Kingdom* [2007] RVR 302, (2007) 23 BHRC 405, ECHR; and see *Morrice v Evans* (1989) Times, 27 February, CA; *Tecbild Ltd v Chamberlain* (1969) 20 P & CR 633, CA; *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, [1969] 2 WLR 1359, PC; *Ellis v Lambeth London Borough Council* (1999) 32 HLR 596, CA (failure by a squatter to fill in and return a form to the local authority regarding community charge did not stop him from claiming adverse possession of the property on the basis of 12 years' occupation); *Roberts v Swangrove Estates Ltd* [2007] EWHC 513 (Ch) [2007] 2 P & CR 326, [2007] All ER (D) 233 (Mar). See also PARA 1080.

As to adverse possession generally see *Moses v Lovegrove* [1952] 2 QB 533, [1952] 1 All ER 1279, CA (tenant ceasing to pay rent); *Jessamine Investment Co v Schwartz* [1978] QB 264, [1976] 3 All ER 521, CA (statutory tenant may be in adverse possession); *Tower Hamlets London Borough Council v Barrett* [2005] EWCA Civ 923, [2006] 1 P & CR 132, [2005] All ER (D) 257 (Jul). A former tenant, who is in possession, can establish adverse possession by reference to the use he makes of the land: *Williams v Jones* [2002] EWCA Civ 1097, [2002] 3 EGLR 69, [2002] All ER (D) 144 (Jul). *Moses v Lovegrove* was applied in *Smith v Lawson* (1998) 75 P & CR 466, [1997] NPC 87, CA (tenant ceased to pay rent on landlord's insistence). See also *Central Midlands Estates Ltd v Leicester Dyers Ltd* [2003] All ER (D) 141 (Jan), [2003] 11 LS Gaz R 33; *Purbrick v Hackney London Borough Council* [2003] EWHC 1871 (Ch), [2004] 1 P & CR 553, [2003] All ER (D) 361 (Jun); *Wills v Wills* [2003] UKPC 84, [2004] 1 P & CR 612, [2003] All ER (D) 27 (Dec) (considered in *Clarke v Swaby* [2007] UKPC 1, [2007] 2 P & CR 12, [2007] All ER (D) 78 (Jan)); *Topplan Estates Ltd v Townley* [2004] EWCA Civ 1369, [2005] 1 EGLR 89, [2004] All ER (D) 388 (Oct).

8 See *BP Properties Ltd v Buckler* (1987) 55 P & CR 337, [1987] 2 EGLR 168, CA; *Bath and North East Somerset District Council v Nicholson* [2002] EWHC 674 (Ch), [2002] All ER (D) 327 (Feb), [2002] 10 EG 156

(CS); *Colin Dawson Windows Ltd v Howard* [2005] EWCA Civ 09, [2005] All ER (D) 148 (Jan) (implied licences). See also *Sandhu v Farooqui* [2003] EWCA Civ 531, [2003] HLR 817, [2003] All ER (D) 09 (Mar).

9 See *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA. A freeholder who has granted a long lease to a tenant and then dispossesses the tenant may, however, acquire a possessory title as against the tenant: see *Rhondda Cynon Taff Borough Council v Watkins* [2003] EWCA Civ 129 at [23], [2003] 1 WLR 1864 at [23], [2003] 1 EGLR 117 per Schiemann LJ.

10 Limitation Act 1980 Sch 1 para 8(4). This provision is not to be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case: Sch 1 para 8(4).

11 *Copeland v Greenhalf* [1952] Ch 488 at 498, [1952] 1 All ER 809 at 812-813.

12 See *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA, where a person who was in effect the donor of a dwelling house, the purchase price having been waived, continued to live in it with the donee's permission and was held to be a licensee and not a tenant at will; and PARA 1068. In *Hughes v Griffin* at 464 and at 30-31, Harman LJ adopted the definition of adverse possession of Romer LJ in *Moses v Lovegrove* [1952] 2 QB 533 at 544, [1952] 1 All ER 1279 at 1285, CA ('if one looks to the position of the occupier and finds that his right to occupation is derived from the owner in the form of permission or agreement or grant, it is not adverse, but, if it is not so derived, it is adverse, even if the owner is, by legislation, prevented from bringing ejectment proceedings'). See also *Hyde v Pearce* [1982] 1 All ER 1029, [1982] 1 WLR 560, CA (claimant who relies on contract of sale to support continued occupation of a property cannot thereafter assert title by adverse possession); and *BP Properties Ltd v Buckler* (1987) 55 P & CR 337, [1987] 2 EGLR 168, CA.

13 As to the meaning of 'land' for these purposes see PARA 1018.

14 Ie for the purposes of the Land Registration Act 2002 Sch 6: see PARAS 1030-1032; the text and notes 15-21; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

15 Ie but for the Land Registration Act 2002 s 96(1) (see PARA 1029): see Sch 6 para 11(1).

16 Ie under the Limitation Act 1980 s 15: see PARA 1025.

17 In determining whether for these purposes a period of limitation would run under the Limitation Act 1980 s 15, there are to be disregarded: (1) the commencement of any legal proceedings; and (2) s 15(6), Sch 1 para 6 (rent paid to person other than true reversioner: see PARA 1063); Land Registration Act 2002 Sch 6 para 11(3).

18 Land Registration Act 2002 Sch 6 para 11(1).

19 Land Registration Act 2002 Sch 6 para 11(2)(a).

20 Land Registration Act 2002 Sch 6 para 11(2)(b).

21 Land Registration Act 2002 Sch 6 para 12.

22 See the Land Registration Act 2002 Sch 6 para 11 (modified by SI 2003/1417); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1037.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1079. Loss of possession.

1079. Loss of possession.

An owner of land may cease to be in possession of it by reason of dispossession or discontinuance of possession¹. Dispossession occurs where a person comes in and drives out the others from possession; discontinuance of possession occurs where the person in possession goes out and is followed into possession by other persons², and it would appear that possession must be continuous and exclusive³.

Where land is not capable of use and enjoyment, there can be no dispossession by mere absence of use and enjoyment, but where the owner has no future use for the land in mind and merely leaves it derelict, possession taken by a trespasser may be adverse even though the owner suffers no inconvenience⁴. Fencing off is most strong evidence of possession of surface land⁵, but cultivation of the surface without fencing off has been held sufficient to prove possession⁶.

Possession of land subject to a rentcharge by a person, other than the person entitled to the rentcharge, who does not pay the rent is deemed to be adverse possession of the rentcharge⁷. Receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease is deemed to be adverse possession of the land⁸.

1 As to dispossession and discontinuance of possession in relation to rentcharges see PARA 1072.

2 See *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA. See also *Rains v Buxton* (1880) 14 ChD 537 at 540 per Fry J; *Littledale v Liverpool College* [1900] 1 Ch 19, CA; *Williams Bros Direct Supply Ltd v Raftery* [1958] 1 QB 159, [1957] 3 All ER 593, CA; and *Tecbild Ltd v Chamberlain* (1969) 20 P & CR 633, CA.

For examples of what acts do and do not amount to dispossession see *Williams Bros Direct Supply Ltd v Raftery* [1958] 1 QB 159, [1957] 3 All ER 593, CA (building land awaiting development); *Bligh v Martin* [1968] 1 All ER 1157, [1968] 1 WLR 804 (field); *Redhouse Farms (Thorndon) Ltd v Catchpole* (1976) 121 Sol Jo 136, CA (marshy land only suitable for shooting); and *Tecbild Ltd v Chamberlain* (minor and harmless acts of trespass).

3 See *Treloar v Nute* [1977] 1 All ER 230, [1977] 1 WLR 1295, CA. See also *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, [1969] 2 WLR 1359, PC, where a trespasser cultivated different plots from time to time and the owners planted fruit trees on part and carried out surveys with a view to development.

4 *Treloar v Nute* [1977] 1 All ER 230, [1976] 1 WLR 1295, CA. The continued presence of a hedge planted by a predecessor in title is not sufficient to maintain possession: *Hounslow London Borough Council v Minchinton* (1997) 74 P & CR 221, [1997] NPC 44, CA.

5 *Williams v Usherwood* (1983) 45 P & CR 235, CA. Even fencing off may however be equivocal, as where fencing was erected by the owner of an easement to use the land as a garden and it was held that the fencing could have been against the public and not necessarily against the freeholder or others entitled to a similar easement: *George Wimpey & Co Ltd v Sohn* [1967] Ch 487, [1966] 1 All ER 232, CA.

6 *Seddon v Smith* (1877) 36 LT 168, CA. As to sporadic farming over part only of a tract of land see *Kenneth McKinney Higgs (substituted for Clotilda Eugenie Higgs) v Nassauvian Ltd* [1975] AC 464, [1975] 1 All ER 95, PC.

7 Limitation Act 1980 Sch 1 para 8(3)(a).

8 Limitation Act 1980 Sch 1 para 8(3)(b); and see PARA 1063.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1080. Intention to possess.

1080. Intention to possess.

For there to be adverse possession¹ the person claiming possession should have the necessary intention, that is, an intention to possess the land to the exclusion of all other persons including the owner with the paper title so far as is reasonable and so far as the process of the law will allow². An intention to use the land merely until prevented from doing so does not amount to the requisite intention³. The fact that the claimant believed that he was the owner will not prevent him from having the necessary intention⁴. Where the trespasser was a minor at the start of the purported period of adverse possession, time may still run in his favour⁵. However, age may be relevant in determining whether the necessary intention was present⁶.

1 See PARA 1078.

2 See *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865; *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA; *Morrice v Evans* (1989) Times, 27 February, CA; *R v Secretary of State for the Environment, ex p Davies* (1990) 61 P & CR 487, CA; and the authorities cited in PARA 1078 note 7. A person claiming to take exclusive possession of property belonging to another has to show by his outward conduct that he intends to take such possession: *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85, [1999] All ER (D) 55, CA. See also *Battersea Freehold and Leasehold Property Co Ltd v Mayor and Burgesses of the London Borough of Wandsworth* (2001) 82 P & CR 137, [2001] 2 EGLR 75 (giving of keys to others was inconsistent with intention to possess). A former tenant does not need to show *animus possidendi* (ie the intention described in the text) (*Williams v Jones* [2002] EWCA Civ 1097, [2002] 3 EGLR 69, [2002] All ER (D) 144 (Jul)); and a person who wrongly believes he is a tenant can occupy property in such a way that he has possession, just as much as a squatter, and does not have to show that he has an intention to exclude the paper owner (*Ofulue v Bossert* [2008] EWCA Civ 7, (2008) Times, 11 February, [2008] All ER (D) 236 (Jan)). See also *Central Midlands Estates Ltd v Leicester Dyers Ltd* [2003] All ER (D) 141 (Jan), [2003] 11 LS Gaz R 33 (use of land by employees for car parking; no intention by employer to possess).

3 See *Powell v McFarlane* (1979) 38 P & CR 452. An admission by a trespasser that, faced with eviction, he would either have taken a lease or left the land, does not indicate an absence of the requisite intention: *Lambeth London Borough Council v Blackburn* [2001] EWCA Civ 912, 82 P & CR 494, [2001] 25 EG 157 (CS).

4 See *Midland Rly Co v Wright* [1901] 1 Ch 738; and *Williams v Usherwood* (1983) 45 P & CR 235, CA.

5 *Willis v Earl of Howe* [1893] 2 Ch 545, CA.

6 See *Powell v McFarlane* (1979) 38 P & CR 452.

UPDATE

1080 Intention to possess

NOTE 2--*Ofulue*, cited, reported at [2008] 3 WLR 1253, reversed in part: [2009] UKHL 16, [2009] AC 990, [2009] 3 All ER 93. It is possible for the owner of a vessel moored in place on a tidal river to acquire title by adverse possession: *Port of London Authority v Ashmore* [2010] EWCA Civ 30, [2010] 1 All ER 1139n.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1081. Effect of acknowledgment of owner's title.

1081. Effect of acknowledgment of owner's title.

Where, having taken adverse possession of unregistered land, a trespasser expressly or impliedly acknowledges the title of the owner, time will start to run afresh against the owner from the date of the acknowledgment¹. However, an acknowledgment of title made after the expiry of the limitation period will not suffice to revive the owner's title².

There is no similar provision in the case of registered land³.

1 See the Limitation Act 1980 s 29(2). See also *Edginton v Clark* [1964] 1 QB 367, [1963] 3 All ER 468, CA (where it was held that an offer by the trespasser to purchase the land from the owner constituted an acknowledgment of the latter's title, with the result that the 12-year limitation period started to run afresh); *Lambeth London Borough Council v Bigden* [2000] EWCA Civ 302, (2000) 33 HLR 478, sub nom *Bigden v Lambeth London Borough Council* [2000] All ER (D) 2076 (petition by trespassers to owner against sale of land constituted acknowledgment of title); *Bath and North East Somerset District Council v Nicholson* [2002] EWHC 674 (Ch), [2002] All ER (D) 327 (Feb), [2002] 10 EG 156 (CS) (letter proposing terms for lease was acknowledgment of title); *Tower Hamlets London Borough Council v Barrett* [2005] EWCA Civ 923, [2006] 1 P & CR 132, [2005] All ER (D) 257 (Jul) (acknowledgment of the paper owner's title by defendants' landlord ineffective for the purposes of the Limitation Act 1980 s 29); *Ashe v National Westminster Bank plc* [2007] EWHC 494 (Ch), [2007] 2 P & CR 525, [2007] All ER (D) 227 (Mar) (affd on other grounds [2008] EWCA Civ 55, [2008] 1 WLR 710, [2008] All ER (D) 128 (Feb)) (no clear acknowledgment of title); *Ofulue v Bossert* [2008] EWCA Civ 7, (2008) Times, 11 February, [2008] All ER (D) 236 (Jan) (defence and counterclaim in earlier proceedings was acknowledgment of claimants' title but not that they were entitled to possession; and defendants' letter making an offer to claimants to buy the property not admissible in evidence because it was a without prejudice communication and not within any established exception to the rule protecting such communications). Quaere whether an offer to pay rent would constitute acknowledgment of title: see *R v Secretary of State for the Environment, ex p Davies* (1990) 61 P & CR 487, CA. As to acknowledgment generally see PARA 1181 et seq.

2 *Sanders v Sanders* (1881) 19 ChD 373, CA; *Nicholson v England* [1926] 2 KB 93. However, where a trespasser enters into a tenancy agreement with the owner after the latter's title has been extinguished by the former's adverse possession, and under that tenancy agreement acknowledges the owner's title and agrees no right in the land had been gained by adverse possession, he will not be permitted to go back on that contractual acknowledgment and assert that by virtue of his previous occupation he had obtained title by adverse possession; he will be estopped from denying the truth of the acknowledgment: *Colchester Borough Council v Smith* [1992] Ch 421, [1992] 2 All ER 561, CA.

3 It follows from the exclusion of the Limitation Act 1980 s 15 by the Land Registration Act 2002 s 96(1) (see PARA 1029) that the Limitation Act 1980 ss 29-32 (extension or exclusion of ordinary time limits: see the text and note 1; and PARA 1168 et seq) will not apply.

UPDATE

1081 Effect of acknowledgment of owner's title

NOTE 1--*Ofulue*, cited, reported at [2008] 3 WLR 1253, reversed in part: [2009] UKHL 16, [2009] 1 AC 990, [2009] 3 All ER 93.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1082. Effect of discontinuance of adverse possession.

1082. Effect of discontinuance of adverse possession.

Where a right of action to recover land¹ has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession², the right of action is no longer deemed to have accrued and no fresh right of action is deemed to accrue unless and until the land is again taken into adverse possession³. The discontinuance of possession must be by a person entitled to that possession⁴.

1 As to the construction of references to a right of action to recover land see the Limitation Act 1980 s 38(7); and PARA 1016. As to the meaning of 'land' see PARA 1018.

2 Where the adverse possessor grants grazing rights to the true owner, each being ignorant of the true position, the adverse possession does not cease merely because the true owner exceeds the rights granted to him and the adverse possessor makes no personal use of the land: *Bligh v Martin* [1968] 1 All ER 1157, [1968] 1 WLR 804.

3 Limitation Act 1980 Sch 1 para 8(2); and see *Generay Ltd v The Containerised Storage Co Ltd* [2005] EWCA Civ 478, [2005] 2 EGLR 7, [2005] All ER (D) 408 (Mar) (irrelevant that squatter sought to exclude himself with regard to a third party). Adverse possession is not it seems terminated by the imposition of rent restriction: see PARA 1058 note 3.

4 See *Rimington v Cannon* (1853) 12 CB 18 at 33, Ex Ch; *Earl of Abergavenny v Brace* (1872) LR 7 Exch 145; and *Bobbett v South Eastern Rly Co* (1882) 9 QBD 424.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1083. Land acquired compulsorily; commons.

1083. Land acquired compulsorily; commons.

The mere fact that land is acquired compulsorily for the purposes of a public undertaking, and is not superfluous land, does not prevent a person who has exclusive possession of that land for the requisite period from acquiring title under the statute of limitation¹; and the fact that a corporation is prohibited by a local Act from letting or selling any part of an estate except on the fulfilment of certain conditions does not prevent the statute from operating against the corporation².

It is doubtful whether rights of common may be barred by an encroachment which has become lawful by time running against the lord of the manor; the rights would probably be held to have been lost by abandonment³.

1 *Bobbett v South Eastern Rly Co* (1882) 9 QBD 424; *Norton v London and North Western Rly Co* (1879) 13 ChD 268, CA; *Midland Rly Co v Wright* [1901] 1 Ch 738; *Rosenberg v Cook* (1881) 8 QBD 162 at 166, CA. Possession for the statutory period of the surface of land over a tunnel, belonging to and used by railway undertakers, gives to the occupier of the surface a title to the surface and so much of what is beneath as is necessary for the enjoyment of the surface, subject to the right of the railway undertakers to the tunnel and so much of the underlying, overlying, and nearlying strata as is necessary for the due and proper enjoyment of the tunnel: *Midland Rly Co v Wright*. As to superfluous land see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 901 et seq.

2 *Brighton Corpn v Brighton Guardians* (1880) 5 CPD 368.

3 See **COMMONS** vol 13 (2009) PARA 505.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1084. Dispossession of subsoil.

1084. Dispossession of subsoil.

The exclusive occupation of an area underground, even if it is without the knowledge of the owner of the land, may constitute adverse possession¹.

A person may be in possession of mines without any user of them, while another person is in possession of the surface². An owner of land who sells it, reserving the minerals, even if he gives up possession of the surface, remains in possession of the mines; in that case non-user is of itself no abandonment of possession, and, no matter how long those mines remain unworked by the owner, the right is unbarred so long as they are not worked by anyone else³. If, however, the owner of the surface or a stranger works the minerals, that amounts to an actual possession by the person working them and a dispossession of the owner of the minerals⁴. By working part of mines or a particular seam, or opening a particular quarry, a person does not necessarily have possession of the contiguous, subjacent or superincumbent fields of minerals or the whole of the quarries of which the part worked forms a portion⁵. The mere wrongful taking of minerals does not amount to taking possession of the mine⁶. If a mine is severed from the surface and held by a different owner, no presumption of possession of the whole of the mine arises from the fact of possession of a part⁷, but if the grantee of all the seams under a defined surface enters upon one seam he will be taken to be in possession of all the seams included in the grant⁸. It is, it seems, in each case a question of fact to what extent, by actual working of the mines, possession has been gained on the one side and lost on the other, but possession may be acquired of the whole mine or seam by the mode of drilling the levels and opening a certain area of minerals⁹. Where there has been no severance of title to the minerals, possession of the surface for the statutory period constitutes possession of the minerals¹⁰.

1 *Rains v Buxton* (1880) 14 ChD 537 (cellar; no evidence of fraudulent concealment); *Bevan v London Portland Cement Co Ltd* (1892) 67 LT 615 (tunnel). As to the running of time where a right of action is concealed by fraud see PARA 1220 et seq.

2 See **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 20 et seq.

3 See *M'Donnell v M'Kinty* (1847) 10 ILR 514; *Smith v Lloyd* (1854) 9 Exch 562; *Keyse v Powell* (1853) 2 E & B 132; *Seaman v Vawdrey* (1810) 16 Ves 390; *Adair v Shaftoe* (circa 1790) cited by Lord Eldon LC in *Norway v Rowe* (1812) 19 Ves 144 at 156; *Hodgkinson v Fletcher* (1781) 3 Doug KB 31; and *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA.

4 *Rich d Lord Cullen v Johnson* (1740) 2 Stra 1142. As to minerals under enfranchised land see *Keyse v Powell* (1853) 2 E & B 132; and see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 644; and **REAL PROPERTY** vol 39(2) (Reissue) PARA 35.

5 *M'Donnell v M'Kinty* (1847) 10 ILR 514; *Earl of Dartmouth v Spittle* (1871) 24 LT 67; *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA; *Ashton v Stock* (1877) 6 ChD 719 at 726; *Glyn v Howell* [1909] 1 Ch 666; cf *Wild v Holt* (1842) 9 M & W 672; *Lord Advocate v Wemyss* [1900] AC 48 at 68, HL.

6 *Thompson v Hickman* [1907] 1 Ch 550 at 562; *Ashton v Stock* (1877) 6 ChD 719 at 726.

7 *Earl of Dartmouth v Spittle* (1871) 24 LT 67 at 68 per Pigott B; *Thompson v Hickman* [1907] 1 Ch 550; *Glyn v Howell* [1909] 1 Ch 666; and see *Ashton v Stock* (1877) 6 ChD 719.

8 *Low Moor Co v Stanley Coal Co Ltd* (1876) 34 LT 186, CA; and see *Davis v Shepherd* (1866) 1 Ch App 410 at 415.

9 *Ashton v Stock* (1877) 6 ChD 719.

10 *Thew v Wingate* (1862) 10 B & S 714; *Seddon v Smith* (1877) 36 LT 168, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1085. Entry under void lease.

1085. Entry under void lease.

If a person enters into possession of land under a lease which is absolutely void and pays no rent, this is a discontinuance of possession by the owner of the land, and time will run against the owner from the date when the possession under the void lease begins¹. However, a lessee who fails to pay rent does not thereby acquire title under the Limitation Act 1980 against his lessor during the term of the lease².

1 *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324, HL.

2 *Jessamine Investment Co v Schwartz* [1978] QB 264, [1976] 3 All ER 521, CA (decided under previous Rent Act legislation). Until the term of the lease comes to an end, the lessee may merely defeat a claim by his landlord for past rent owing for more than six years: see the Limitation Act 1980 s 19; and PARA 1021.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1086. Possession by or on behalf of another.

1086. Possession by or on behalf of another.

An owner who actually occupies land is in possession of it. If he does not actually occupy it but puts someone else in to occupy it for him without creating any kind of tenancy, then the owner is equally in possession¹; and he is also in possession and in receipt of the profits of the land if he farms it by a bailiff².

If an occupier carries out activities on land with the express or implied consent of the owner, the land is occupied on behalf of the owner³. Possession of property may be held by one person on behalf of the owner, and their possession will not therefore be adverse⁴.

1 See *Peakin v Peakin* [1895] 2 IR 359; *Nesbitt v Mablethorpe UDC* [1918] 2 KB 1, CA; and *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA, where the grantor continued to occupy a house with the grantee's permission.

2 *Grant v Ellis* (1841) 9 M & W 113 at 128.

3 *Hughes v Griffin* [1969] 1 All ER 460, [1969] 1 WLR 23, CA.

4 See eg *Penney v Todd* (1878) 26 WR 502 (receiver); *Lyell v Kennedy* (1889) 14 App Cas 437, HL (agent); *Peakin v Peakin* [1895] 2 IR 359 (guests); *Moore, Lessee v Doherty* (1843) 5 ILR 449 (servants); *Re Howlett* [1949] Ch 767 (guardian for minor); and *Leonard v Walsh* [1941] IR 25 (person of unsound mind).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1087. Demand for possession not possession.

1087. Demand for possession not possession.

Where a trespasser is in possession of land, the mere sending and delivery of a letter by which delivery up of possession is demanded will not have the effect of causing the owner to resume possession and the trespasser to lose possession¹. Where proceedings for the recovery of land have been dismissed for want of prosecution, but the party holding the paper title subsequently brings a fresh claim for recovery of that land, the issue of the claim form in the first proceedings does not, for the purposes of the second claim, prevent time running in favour of the person in adverse possession².

1 *Mount Carmel Investments Ltd v Peter Thurlow Ltd* [1988] 3 All ER 129, [1988] 1 WLR 1078, CA.

2 *Markfield Investments Ltd v Evans* [2001] 2 All ER 238, [2001] 1 WLR 1321, CA.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1088. Possession by court through receiver.

1088. Possession by court through receiver.

Where, during the pendency of a claim, the court is in possession of property by a receiver, that possession inures for the benefit of the party to the claim ultimately declared to be entitled, so that during that possession time will run against, but not in favour of, a person who is a stranger to the claim¹.

¹ *Anon* (1737) 2 Atk 15; *Wrixon v Vize* (1842) 3 Dr & War 104 at 123; *Harrison v Duignan* (1842) 2 Dr & War 295; *Hunt v Bateman* (1848) 10 I Eq R 360 at 378; *Groome v Blake* (1858) 8 ICLR 428, Ex Ch; *Re Butler's Estate* (1863) 13 I Ch R 453; *Penney v Todd* (1878) 26 WR 502; *Re Slacke's Estate* [1896] 1 IR 191, CA. An acknowledgment by the receiver of an incumbrancer's claims may protect those claims: see *Penney v Todd*.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1089. Position of person in adverse possession.

1089. Position of person in adverse possession.

While a person who is in possession of unregistered land without title continues in possession, then, before the statutory period has elapsed, he has a transmissible interest in the property which is good against all the world except the rightful owner, but an interest which is liable at any moment to be defeated by the entry of the rightful owner; and, if that person is succeeded in possession by one claiming through him who holds until the expiration of the statutory period, the successor has then as good a right to the possession as if he himself had occupied for the whole period¹. The position is somewhat different under the Land Registration Act 2002 since adverse possession, for however long, will not of itself bar the owner's title to a registered estate².

1 *Asher v Whitlock* (1865) LR 1 QB 1; *Keeffe v Kirby* (1857) 6 ICLR 591; *Clarke v Clarke* (1868) IR 2 CL 395; *Perry v Clissold* [1907] AC 73 at 79, PC; *Calder v Alexander* (1900) 16 TLR 294.

2 See PARA 1017.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1090. Abandonment of trespasser's possession.

1090. Abandonment of trespasser's possession.

If an intruder without title holds possession of land for less than the statutory period and then abandons it and no other person immediately takes possession, as there is then no person in adverse possession for the purpose of the Limitation Act 1980 the rightful owner is in the same position as if no intrusion had taken place, and, even if he is out of possession for the statutory period and another intruder subsequently takes possession but does not hold for the statutory period, the rightful owner's title is unaffected¹.

¹ See the Limitation Act 1980 Sch 1 para 8(2); and PARA 1082. See also *Trustees, Executors and Agency Co Ltd and Templeton v Short* (1888) 13 App Cas 793, PC; *Willis v Earl Howe* [1893] 2 Ch 545, CA; and *Samuel Johnson & Sons Ltd v Brock* [1907] 2 Ch 533.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1091. Possession by series of trespassers.

1091. Possession by series of trespassers.

If a series of trespassers, adverse to one another and to the rightful owner, take and keep possession of unregistered land continuously in succession for various periods, each less than, but exceeding in the whole, 12 years, the rightful owner is barred¹. The earliest possessor within the 12 years may have the best title², provided any subsequent possession is contrary to the will of the earliest possessor³.

¹ See under the Limitation Act 1980 s 15; and see PARA 1025. See *Mount Carmel Investments Ltd v Peter Thurlow Ltd* [1988] 3 All ER 129, [1988] 1 WLR 1078, CA; and *Doe d Goody v Carter* (1847) 9 QB 863.

² See *Dixon v Gayfer*, *Fluker v Gordon* (1853) 17 Beav 421, where it was suggested that the last of a series of adverse possessors would be able to hold by reason of the infirmity of the title of anyone else to eject him. This decision was criticised in *Asher v Whitlock* (1865) LR 1 QB 1, where it was held that possession is good against all the world except the person who can show a good title; and the heir-at-law of a devisee of a wrongful possessor succeeded against a successive occupier even though that occupier had entered on the land before 12 years had run from the first wrongful entry. In *Perry v Clissold* [1907] AC 73, PC, *Asher v Whitlock* was approved and it was held that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. Although *Perry v Clissold* is a decision of the Privy Council, it seems that *Dixon v Gayfer*, *Fluker v Gordon* and *Doe d Carter v Barnard* (1849) 13 QB 945, may not stand against it. See also *Dalton v Fitzgerald* [1897] 2 Ch 86 at 90, CA.

³ See *Mount Carmel Investments Ltd v Peter Thurlow Ltd* [1988] 3 All ER 129, [1988] 1 WLR 1078, CA (if the earlier possessor abandons his claim to possession, the subsequent possessor may obtain title to the land).

UPDATE

1091 Possession by series of trespassers

NOTE 3--See *Site Developments (Ferndown) Ltd v Cuthbury Ltd* [2010] EWHC 10 (Ch), [2010] All ER (D) 127 (Jan).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1092. Possession by person claiming limited interest.

1092. Possession by person claiming limited interest.

If a person takes wrongful possession of unregistered land and keeps it for the prescribed period of limitation, not claiming to be himself entitled in fee simple but claiming a limited interest under some instrument, it does not follow that he may, by possession until the rightful owner is barred, claim the whole estate in perpetuity¹. Whether possession was taken under the instrument or independently of it is, it seems, a question of fact in each particular case².

1 As to the reasons for this see **ESTOPPEL** vol 16(2) (Reissue) PARA 1041. If the interest claimed is a life estate under a will, the devisee in remainder will be entitled to enter when that estate determines: see *Hawksbee v Hawksbee* (1853) 11 Hare 230; *Anstee v Nelms* (1856) 1 H & N 225; *Board v Board* (1873) LR 9 QB 48; and *Molony v Molony* [1894] 2 IR 1. The doctrine of *Board v Board* applies to instruments other than wills: *Dalton v Fitzgerald* [1897] 2 Ch 86 at 95, CA, per Rigby LJ; and see *Frazer v Riverside* [1913] 1 IR 539.

As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

2 *Anstee v Nelms* (1856) 1 H & N 225.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1093. Encroachment by lessee on lessor's adjoining land.

1093. Encroachment by lessee on lessor's adjoining land.

A lessee who takes possession of land belonging to his lessor which adjoins land demised to him is deemed to acquire the extension as an addition to the land originally demised and on the same terms and conditions¹. This principle applies whether or not the land encroached upon is waste².

1 See *Kingsmill v Millard* (1855) 11 Exch 313; *Smirk v Lyndale Developments Ltd* [1975] Ch 317, [1975] 1 All ER 690, CA; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 195-197. The presumption that a lessee taking adverse possession of adjoining land does so for the benefit of his lessor is binding on a third party: *Batt v Adams* (2001) 82 P & CR 406, sub nom *Adams v Batt* [2001] All ER (D) 156 (May), CA.

2 See *Long v Tower Hamlets London Borough Council* [1998] Ch 197 at 203, [1996] 2 All ER 683 at 687-688.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2.
 PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(iv) Possession of Land/1094.
 Possession by persons beneficially interested but not solely or absolutely entitled.

1094. Possession by persons beneficially interested but not solely or absolutely entitled.

The Law of Property Act 1925 provides that nothing in the part of that Act which regulates the creation and subsistence of legal estates and equitable interests¹ affects the operation of any statute or of the general law for the limitation of actions².

Under the Limitation Act 1980, where any settled land³ or any land held on trust⁴ is in the possession of a person entitled to a beneficial interest in the land, not being a person solely or absolutely entitled, no right of action to recover the land is to be deemed⁵ to accrue during that possession to any person in whom the land is vested as tenant for life⁶, statutory owner⁷ or trustee⁸, or to any other person entitled to a beneficial interest in the land⁹. So long as a beneficiary retains a right of action to recover land, the legal estate of the trustees remains unextinguished¹⁰. Similarly, a person is not to be regarded as being in adverse possession of a registered estate¹¹ for the purposes of the Land Registration Act 2002 at any time when the estate is subject to a trust, unless the interest of each of the beneficiaries in the estate is an interest in possession¹². Nor is a person to be regarded as being in adverse possession of a registered rentcharge for the purposes of the 2002 Act at any time when the registered rentcharge is subject to a trust, unless the interest of each of the beneficiaries in the registered rentcharge is an interest in possession¹³.

1 le the Law of Property Act 1925 Pt I (ss 1-39): see **REAL PROPERTY**.

2 See the Law of Property Act 1925 s 12. It has nevertheless been held that the effect of the former imposition by that Act of the statutory trust for sale in the case of property held in undivided shares or joint ownership was to abrogate the former rule by which time ran in favour of one co-owner of land who was in possession of the entirety, or more than his share, against another co-owner (see the Real Property Limitation Act 1833 ss 6, 12, 34 (repealed); the Real Property Limitation Act 1874 s 1 (repealed); *Sanders v Sanders* (1881) 19 ChD 373, CA; *Re Hobbs, Hobbs v Wade* (1887) 36 ChD 553; and *Thornton v France* [1897] 2 QB 143, CA; cf *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] AC 1072, [1968] 1 All ER 530, PC, a case concerning co-ownership of land in the Bahamas, where a tenancy in common could still exist as a legal estate) and to prevent a beneficial co-owner who was a trustee for sale from setting up the statute of limitation against another co-owner: *Re Landi, Giorgi v Navani* [1939] Ch 828, [1939] 3 All ER 569, CA. As to the principle that no period of limitation applies to a claim by a beneficiary to recover trust property in the possession of the trustee see the Limitation Act 1980 s 21(1)(b); and PARA 1140. In *Re Milking Pail Farm Trusts, Tucker v Robinson* [1940] Ch 996, [1940] 4 All ER 54, the imposition of the statutory trust for sale was held to prevent the trustee in bankruptcy of a co-owner from setting up the statute of limitation against a mortgagee of the co-owner's interest, but the correctness of this decision has been doubted on the ground that in this case the mortgagor had never been a trustee of the legal estate under the statutory trust for sale. However, the Trusts of Land and Appointment of Trustees Act 1996 introduced a new unitary system of holding land on trust (the 'trust of land') in place of the existing dual system of trusts for sale and settled land, enabling trustees for sale to postpone sale of the land in question: see PARA 1023. The definition of statutory trust for sale within the Law of Property Act 1925 s 35 and consequently within the Limitation Act 1980 s 38(1) was repealed by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4. The effect of the imposition of the trust of land is as yet uncertain in this respect.

3 The Trusts of Land and Appointment of Trustees Act 1996 places severe restrictions on the creation of settlements subsequent to 1 January 1997: see s 2; and PARA 1022.

In the Limitation Act 1980, 'settled land', 'statutory owner' and 'tenant for life' have the same meanings respectively as in the Settled Land Act 1925 (see s 117(1)(xxiv), (xxvi), (xxviii); and **SETTLEMENTS** vol 42 (Reissue) PARAS 671, 680, 766); Limitation Act 1980 s 38(1). As to the meaning of 'land' see PARA 1018.

4 In the Limitation Act 1980, 'trust' and 'trustee' have the same meanings respectively as in the Trustee Act 1925 (see s 68(1) para (17); and **TRUSTS** vol 48 (2007 Reissue) para 601); Limitation Act 1980 s 38(1). Land held previously on trust for sale is now held as a trust of land: see note 2; and PARA 1023.

5 le for the purposes of the Limitation Act 1980. As to the application of that Act to equitable interests in land generally see s 18(1); and PARA 1019.

6 See note 3.

7 See note 3.

8 See note 4.

9 Limitation Act 1980 Sch 1 para 9 (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4). See also note 2; and PARA 1023. The broad effect of what is now the Limitation Act 1980 Sch 1 para 9 may be said to be the reintroduction of the doctrine of non-adverse possession among beneficial co-owners of land; and a person absolutely entitled to a share of an unadministered estate has a sufficient interest for those purposes: *Earnshaw v Hartley* [2000] Ch 155, [1999] 2 EGLR 100, CA.

10 See the Limitation Act 1980 s 18(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and PARA 1096.

11 As to the meaning of 'registered estate' see PARA 1018 note 11.

12 Land Registration Act 2002 Sch 6 para 12.

13 See the Land Registration Act 2002 Sch 6 para 12 (modified by SI 2003/1417).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(v) Effect of Expiry of the Period of Limitation under the Limitation Act 1980/1095. Extinction of title.

(v) Effect of Expiry of the Period of Limitation under the Limitation Act 1980

1095. Extinction of title.

At the expiration of the periods prescribed by the Limitation Act 1980¹ for any person to being a claim to recover unregistered freehold land (including a redemption claim), the title of that person to the land is extinguished². This is subject to the special provisions relating to settled land and land held on trust³. The extinguished title cannot afterwards be re-vested either by re-entry⁴ or by a subsequent payment or acknowledgment of title⁵. An unregistered rentcharge is extinguished when the remedy to recover it is barred⁶.

Where the land which is the subject of adverse possession is leasehold, the leaseholder's title is extinguished at the expiry of the limitation period. The freeholder's title is unaffected by this adverse possession and time will not start to run against him until the determination of the lease⁷. The adverse possessor is not an assignee of the lease and does not enter into privity of contract with the freeholder⁸.

¹ As to the respective statutory periods see PARA 1025 et seq (claims to recover land), para 1129 (redemption claims).

² Limitation Act 1980 s 17 (amended by the Land Registration Act 2002 s 135, Sch 13). Contrast the position with registered land, where title is not automatically extinguished: see PARAS 1102-1103. Although a foreclosure claim in respect of mortgaged land is treated as a claim to recover land (see the Limitation Act 1980 s 20(4)), it seems that the extinction of a mortgagee's title under s 17 will not in itself extinguish his right to recover the mortgage money as distinct from his title to the land; but cf *Re Hazeldine's Trusts* [1908] 1 Ch 34, CA; and *Re Fox, Brooks v Marston* [1913] 2 Ch 75 (decisions under the Real Property Limitation Act 1833 s 34 (repealed)). See also *Cotterell v Price* [1960] 3 All ER 315, [1960] 1 WLR 1097 (second mortgagee's rights against mortgagor statute-barred; no right to redeem first mortgage). As to the limitation of claims for the recovery of money charged on land see PARA 1105 et seq.

³ The provisions contained in the Limitation Act 1980 s 18 (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4). As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-1023, 1094, 1096, 1101.

⁴ *Brassington v Llewellyn* (1858) 27 LJ Ex 297; *Bryan v Cowdal* (1873) 21 WR 693; *Re Jolly, Gathercole v Norfolk* [1900] 2 Ch 616, CA.

⁵ See PARAS 1059, 1182 et seq. A claimant who has acknowledged after the expiry of the 12-year period of adverse possession that his previous occupancy of the land was by licence and consent of the owner will be estopped from denying that this was in fact so, and the owner's title to the land will be revived: *Colchester Borough Council v Smith* [1992] Ch 421, [1992] 2 All ER 561, CA.

⁶ For the purposes of the Limitation Act 1980, a rentcharge is land (see PARA 1018) and therefore s 17 applies. See also *Sykes v Williams* [1933] Ch 285, CA, where, a rentcharge having been extinguished, it was held that there was no owner for the time being of the rentcharge by whom a power of re-entry given by the deed creating the rentcharge could be enforced; and see PARA 1073.

⁷ See *Fairweather v St Marylebone Property Co* [1963] AC 510, [1962] 2 All ER 288, HL, where it was held that where, in respect of unregistered land, the leaseholder surrendered his title to the land to the freeholder after time had run against him in favour of the adverse possessor, the surrender took effect as a determination of the lease, with the result that the freeholder acquired an immediate right to bring a claim for possession of the land against the adverse possessor.

8 *Tichborne v Weir* (1892) 67 LT 735, CA; *Tickner v Buzzacott* [1965] Ch 426, [1965] 1 All ER 131. Where the covenants in question run with the land, the adverse possessor, or any person claiming through him, will be bound by them: see *Re Nisbet and Potts' Contract* [1906] 1 Ch 386, CA.

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1096. Cases in which extinction of title is postponed.

Where the period prescribed by the Limitation Act 1980 has expired for the bringing of a claim to recover land by a tenant for life or a statutory owner of settled land¹, his legal estate is not extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred².

Where any land is held upon trust³, and the period prescribed has expired for the bringing of a claim to recover the land by the trustees, the trustees' estate is not extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or proceeds of sale either has not accrued or has not been barred⁴. Where any settled land⁵ is vested in a statutory owner or any land is held upon trust, a claim to recover the land may be brought by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land whose right of action has not been barred, notwithstanding that the right of action of the statutory owner or trustees would, apart from this provision, have been barred⁶.

1 As to the meaning of 'tenant for life', 'statutory owner' and 'settled land' see PARA 1094 note 3. Note that severe restrictions have been placed on the creation of strict settlements subsequent to 1 January 1997 by the Trusts of Land and Appointment of Trustees Act 1996 s 2: see PARA 1022.

2 See the Limitation Act 1980 s 18(2)(a). The legal estate accordingly remains vested in the tenant for life or statutory owner and devolves in accordance with the Settled Land Act 1925 (see Pt I (ss 1-37); and **SETTLEMENTS**); but if and when every right of action of a person beneficially entitled has been barred, the legal estate is extinguished: Limitation Act 1980 s 18(2). See also note 1.

3 As to the meaning of 'trust' and 'trustee' see PARA 1094 note 4. Land held previously on trust for sale is held as a trust of land subsequent to 1 January 1997: see PARA 1023. See also note 1.

4 Limitation Act 1980 s 18(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4). If and when every right of action of a person beneficially entitled has been barred, the trustees' estate is extinguished: s 18(3) (as so amended).

5 As to the severe restrictions placed on the creation of settled land and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

6 Limitation Act 1980 s 18(4) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4).

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1097. Nature of title acquired.

The operation of the statutory provision for the extinction of title¹ is merely negative; it extinguishes the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of others to eject him².

A title gained by the operation of the statute is a good title, both at law and in equity³, and will be forced by the court on a reluctant purchaser⁴. Proof, however, that a vendor and those through whom he claims have had independent possession of an estate for 12 years will not be sufficient to establish a saleable title without evidence to show the state of the title at the time that possession commenced. If the contract for purchase is an open one, possession for 12 years is not sufficient and a full length of title is required⁵. Although possession of land is prima facie evidence of seisin in fee, it does not follow that a person who has gained a title to land from the fact of certain persons interested in it being barred of their rights has the fee simple vested in himself; for, although he may have gained an indefeasible title against those who had an estate in possession, there may be persons entitled in reversion or remainder whose rights are quite unaffected by the statute⁶.

1 le the Limitation Act 1980 s 17: see PARA 1095.

2 See *Tichborne v Weir* (1892) 67 LT 735, CA; and *Taylor v Twinberrow* [1930] 2 KB 16 at 23, 28. It has been said that the effect of the statute is to execute a conveyance to the person in possession, and not only to extinguish the right of the former owner, but to transfer the legal fee simple (*Scott v Nixon* (1843) 3 Dr & War 388 at 407; and see *Doe d Jukes v Sumner* (1845) 14 M & W 39 at 42; and *Incorporated Society in Dublin for Promoting English Protestant Schools in Ireland v Richards* (1841) 1 Dr & War 258 at 289), but the true view is that stated in the text (see *Re Atkinson and Horsell's Contract* [1912] 2 Ch 1 at 9, 17, CA; and *Taylor v Twinberrow*). As to the right of a mortgagee who has acquired a title by possession to enlarge the mortgage term into a fee simple see PARA 1099. The statute which gives a wrongful holder a title to land does not give him a way of necessity: *Wilkes v Greenway* (1890) 6 TLR 449, CA; and see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 165.

3 See *Asher v Whitlock* (1865) LR 1 QB 1; and *Perry v Clissold* [1907] AC 73, PC.

4 *Re Atkinson and Horsell's Contract* [1912] 2 Ch 1, CA; and see PARA 1089; and **SALE OF LAND** vol 42 (Reissue) PARA 143. See, however, *George Wimpey & Co Ltd v Sohn* [1967] Ch 487, [1966] 1 All ER 232, CA (vendor contracted to show 20 years' undisputed possession; 12 years' possessory title held not to accord with the contract). Where property is purchased compulsorily and the purchase money is paid into court, a person who has been in possession for the statutory period is entitled to an order for payment out: *Re Harris, ex p LCC* (1909) 53 Sol Jo 716; *Re Metropolitan Street Improvement Act 1877, ex p Chamberlain* (1880) 14 ChD 323; and see *Ex p Winder* (1877) 6 ChD 696; *Gedye v Works and Public Buildings Comrs* [1891] 2 Ch 630, CA; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 664-665.

5 *Re Atkinson and Horsell's Contract* [1912] 2 Ch 1 at 11, CA. The statutory period of title was 30 years under the Law of Property Act 1925 s 44(1) (as originally enacted), but was reduced to 15 years by the Law of Property Act 1969 s 23. See further **SALE OF LAND** vol 42 (Reissue) PARA 139.

6 See PARA 1044.

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 PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(v) Effect of Expiry of the Period of
 Limitation under the Limitation Act 1980/1098. Extent of title acquired.

1098. Extent of title acquired.

The title gained by possession is limited by easements and other rights which still remain unextinguished¹, but a person who by possession gains the leasehold interest to property held on lease does not thereby become liable to be sued on the covenants of the lease; the term is in no sense vested in him², although, if those covenants are enforceable by a proviso for re-entry on breach of any of them, the person who so gains a title may indirectly be forced to perform the covenants to preserve his interest from being destroyed by a claim for possession and he has no right to apply for relief from forfeiture³. A title acquired by adverse possession does not destroy the right of persons entitled to the benefit of covenants to enforce them against the land⁴.

1 See *Re Nisbet and Potts' Contract* [1906] 1 Ch 386, CA. The view that the title gained by possession is commensurate with the interest which the rightful owner has lost and must have the same legal character (see *Rankin v M'Murtry* (1889) 24 LR Ir 290 at 297; and *Walter v Yalden* [1902] 2 KB 304) is incorrect: see *Taylor v Twinberrow* [1930] 2 KB 16 at 23, 28, DC. As to the rights obtained following adverse possession of leasehold land see PARA 1095. As to the right of a mortgagee who has acquired a title by possession to enlarge the mortgage term into a fee simple see PARA 1099.

2 *Tichborne v Weir* (1892) 67 LT 735, CA; *O'Connor v Foley* [1905] 1 IR 1; *Williams v Allen* (1889) 5 TLR 200; cf *Re Hayden* [1904] 1 IR 1; *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510, [1962] 2 All ER 288, HL; and see PARA 1050. The party in possession by virtue of the statute may, however, estop himself from denying that he is an assignee of the lease: see *O'Connor v Foley*; *Ashe v Hogan* [1920] 1 IR 159; and **ESTOPPEL** vol 16(2) (Reissue) PARA 1038. As to the effect of a person entering, as against a tenant from year to year, and paying rent see *Jackson v M'Master* (1890) 28 LR Ir 176, CA; and *Mulcaire v Lane-Joynt* (1893) 32 LR Ir 683, CA. As to the effect of a purchase of the reversion by a tenant on the rights acquired by a sub-tenant against the tenant under the Limitation Act 1980 see PARA 1050.

3 *Tickner v Buzzacott* [1965] Ch 426, [1965] 1 All ER 131; and see PARA 1050.

4 See *Re Nisbet and Potts' Contract* [1906] 1 Ch 386, CA; and *Ashe v Hogan* [1920] 1 IR 159 at 165-166. This applies to restrictive covenants as well as to positive covenants, whether the restrictive covenants are contained in a lease or in the conveyance of freehold. The Limitation Act 1980 s 17 (see PARA 1095) does not extinguish these covenants, and, it seems, they are enforceable against the land in the case of a person who acquires a title by the statute. They are also similarly enforceable against a purchaser for valuable consideration from such a person without actual notice, if that purchaser accepts a title for less than the full statutory period (now 15 years: see PARA 1097 note 5) and if by insisting on a title for the full statutory period he would have had notice of the covenants: *Re Nisbet and Potts' Contract*; and see **EQUITY** vol 16(2) (Reissue) PARA 620.

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1099. Mortgaged property.

If a mortgagee of unregistered land subject to a lease receives the rent reserved for 12 years, his receipt of the rent amounts to adverse possession of the mortgaged land¹, and the mortgagor's right to redeem is barred². The mortgagee thus gains a title to the reversion as against the tenant who makes the payment³.

Where a mortgagee of freeholds acquires a title under the Limitation Act 1980, he or the persons deriving title under him may enlarge the mortgage term into a fee simple under the statutory power for the purpose, discharged from any legal mortgage affected by the title so acquired, and a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him so discharged, and the same vests accordingly⁴. Similarly, where a mortgagee of leaseholds acquires a title under the Act, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired is to vest in him, free from any right of redemption which is barred, and the same vests accordingly without giving rise to a forfeiture for want of a licence to assign; thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired merges, subject to any express provision to the contrary contained in the deed, in the leasehold reversion, or is extinguished⁵.

1 See the Limitation Act 1980 Sch 1 para 8(3)(b).

2 See the Limitation Act 1980 s 16; and PARA 1129.

3 *Ward v Carttar* (1865) LR 1 Eq 29; *Markwick v Hardingham* (1880) 15 ChD 339, CA.

4 Law of Property Act 1925 ss 88(3), 153(1), (3); and see **MORTGAGE** vol 77 (2010) PARA 447.

5 Law of Property Act 1925 s 89(3); and see **MORTGAGE** vol 77 (2010) PARA 447.

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1100. Title by joint possession.

Where two or more persons acquire a title under the statute of limitation by joint possession, they become joint tenants of the property so acquired¹, but their beneficial interests may be those of tenants in common in equity².

1 *Ward v Ward* (1871) 6 Ch App 789; *Bolling v Hobday* (1882) 31 WR 9; *Re Brown, Coyle v M'Fadden* [1901] 1 IR 298; *Smith v Savage* [1906] 1 IR 469; *Re Christie, Christie v Christie* [1917] 1 IR 17. As to joint ownership since 1 January 1926 see the Law of Property Act 1925 ss 34, 36; note 2; and **REAL PROPERTY** vol 39(2) (Reissue) PARA 189 et seq. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-1023, 1101.

2 *Williams v Williams* (1867) 2 Ch App 294; *Smith v Savage* [1906] 1 IR 469; *Marten v Kearney* (1902) 36 ILT 117; *Re Christie, Christie v Christie* [1917] 1 IR 17; and see *MacCormack v Courtney* [1895] 2 IR 97. A tenancy in common in a legal estate cannot be created after 1 January 1926: see the Law of Property Act 1925 ss 34, 36(2); and **REAL PROPERTY** vol 39(2) (Reissue) PARA 207.

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1101. Entailed interests.

Where the prescribed period has run out against a tenant in tail during his life, the right of all persons whom he might have barred by any act of his own is barred by the effluxion of time against himself¹. Where the prescribed period has begun to run against a tenant in tail in his lifetime but he has died before the completion of the prescribed period, the right of all persons whom he might have barred by any act of his own is barred at the end of the period when time would have run against the tenant in tail if he had continued to live².

The Trusts of Land and Appointment of Trustees Act 1996 has severely restricted the creation of entailed interests such that where a person purports by any instrument coming into operation after 1 January 1997 to grant to another person an entailed interest in real or personal property, the instrument is not effective to grant an entailed interest, but operates instead as a declaration that the property is held in trust absolutely for the person to whom an entailed interest in the property was purportedly granted³. In addition, where a person purports by an instrument coming into operation after 1 January 1997 to declare himself a tenant in tail of real or personal property, the instrument is not effective to create an entailed interest⁴.

1 See the Limitation Act 1980 s 38(5), which provides that the person whose estate or interest might have been barred is deemed to claim through the person who might have barred it. A person whose interest might have been so barred is also expressly excluded from the benefit of s 15(6), Sch 1 para 4 (which saves future interests) by s 15(3): see PARA 1044. For the general principle that time runs against a person claiming through another from the date when a cause of action accrued to that other see PARA 1025. Entailed interests are since 1925 equitable only (see the Law of Property Act 1925 s 1(3)), but this change does not affect the operation of any statute or of the general law for the limitation of claims or proceedings relating to land (s 12). As to the application of the Limitation Act 1980 to equitable interests see s 18(1); and PARA 1019.

2 See the Limitation Act 1980 s 38(5); and *Goodall v Skerratt* (1855) 3 Drew 216. The law of descent before 1926 is still applicable in the case of existing entailed interests: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 631. See, however, the text and notes 3-4.

3 See the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 5(1), Sch 4 (repealing the Law of Property Act 1925 s 130(1)-(3), (6)).

4 See the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 5(2).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(vi) Registration of Adverse Possessor as Proprietor under the Land Registration Act 2002/1102. Application for registration and procedure.

(vi) Registration of Adverse Possessor as Proprietor under the Land Registration Act 2002

1102. Application for registration and procedure.

Under the Land Registration Act 2002, a squatter is entitled to apply to be registered as proprietor after ten years¹. The right to make such applications is subject to certain restrictions².

The procedure on such an application is described in detail elsewhere in this work³. The Chief Land Registrar⁴ must give notice of an application for registration of an adverse possessor as proprietor to:

- 125 (1) the proprietor of the estate to which the application relates⁵;
- 126 (2) the proprietor of any registered charge⁶ on the estate⁷;
- 127 (3) where the estate is leasehold, the proprietor of any superior registered estate⁸;
- 128 (4) any person who is registered in accordance with land registration rules⁹ as a person to be notified under these provisions¹⁰; and
- 129 (5) such other persons as rules may provide¹¹.

A person given such notice may require that the application to which the notice relates be dealt with under the provisions¹² requiring any of three statutory conditions¹³ to be met¹⁴; and if such an application is required to be dealt with in that manner, the applicant is only entitled to be registered as the new proprietor of the estate if any of those conditions is met¹⁵. If such an application is not required to be dealt with as described above, the applicant is entitled to be entered in the register as the new proprietor of the estate¹⁶.

Where a person's application for registration as proprietor under the above provisions is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession¹⁷ of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection¹⁸. A person may not, however, make such an application if:

- 130 (a) he is a defendant in proceedings which involve asserting a right to possession of the land¹⁹;
- 131 (b) judgment for possession of the land has been given against him in the last two years²⁰; or
- 132 (c) he has been evicted from the land pursuant to a judgment for possession²¹.

If a person makes such an application, he is entitled to be entered in the register as the new proprietor of the estate²².

The above provisions apply with modifications in the case of registered rentcharges²³.

1 See the Land Registration Act 2002 Sch 6 para 1; and PARA 1030.

- 2 See the Land Registration Act 2002 Sch 6 para 1(3); and **PARA 1030**; Sch 6 para 8; and **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1031**.
- 3 See **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1027** et seq.
- 4 As to the Chief Land Registrar see **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1066**.
- 5 Land Registration Act 2002 Sch 6 para 2(1)(a).
- 6 As to the meaning of 'registered charge' see **PARA 1018** note 11.
- 7 Land Registration Act 2002 Sch 6 para 2(1)(b).
- 8 Land Registration Act 2002 Sch 6 para 2(1)(c). As to the meaning of 'registered estate' see **PARA 1018** note 11.
- 9 As to land registration rules generally see **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1125**.
- 10 See the Land Registration Act 2002 Sch 6 para 2(1)(d).
- 11 Land Registration Act 2002 Sch 6 para 2(1)(e).
- 12 **Ie** under the Land Registration Act 2002 Sch 6 para 5: see **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1029**.
- 13 **Ie** the conditions under the Land Registration Act 2002 Sch 6 para 5: see **LAND REGISTRATION** vol 26 (2004 Reissue) **PARA 1029**.
- 14 Land Registration Act 2002 Sch 6 para 3(1).
- 15 Land Registration Act 2002 Sch 6 para 5(1).
- 16 Land Registration Act 2002 Sch 6 para 4.
- 17 As to the meaning of 'adverse possession' see **PARA 1078**.
- 18 Land Registration Act 2002 Sch 6 para 6(1).
- 19 Land Registration Act 2002 Sch 6 para 6(2)(a).
- 20 Land Registration Act 2002 Sch 6 para 6(2)(b).
- 21 Land Registration Act 2002 Sch 6 para 6(2)(c).
- 22 Land Registration Act 2002 Sch 6 para 7.
- 23 See **LAND REGISTRATION** vol 26 (2004 Reissue) **PARAS 1036, 1038-1042**.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(2) LAND AND RENT/(vi) Registration of Adverse Possessor as Proprietor under the Land Registration Act 2002/1103. Effect of registration.

1103. Effect of registration.

Where a person is registered¹ as the proprietor of an estate in land² in pursuance of an application under the provisions relating to adverse possessors³, the title by virtue of adverse possession⁴ which he had at the time of the application is extinguished⁵. Such registration of a person as the proprietor of an estate in land does not affect the priority of any interest affecting the estate⁶. Where, however, a person is so registered as the proprietor of an estate, the estate is vested in him free of any registered charge⁷ affecting the estate immediately before his registration⁸; but this does not apply where registration as proprietor is in pursuance of an application determined by reference to whether any of the three statutory conditions⁹ applies¹⁰. Provision is made as to the apportionment and discharge of charges affecting property other than the estate¹¹.

These provisions apply with modifications in relation to registration as the proprietor of a registered rentcharge¹².

1 As to the meaning of 'registered' see PARA 1030 note 2.

2 As to the meaning of 'land' see PARA 1018.

3 I.e. an application under the Land Registration Act 2002 Sch 6: see PARAS 1030-1031, 1102; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

4 As to the meaning of 'adverse possession' see PARA 1078. 'Title by virtue of adverse possession' refers to the common law position whereby adverse possession creates a fee simple in the possessor: see *Asher v Whitlock* (1865) LR 1 QB 1.

5 Land Registration Act 2002 Sch 6 para 9(1).

6 Land Registration Act 2002 Sch 6 para 9(2).

7 As to the meaning of 'registered charge' see PARA 1018 note 11.

8 Land Registration Act 2002 Sch 6 para 9(3).

9 I.e. the conditions in the Land Registration Act 2002 Sch 6 para 5: see PARA 1102; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1029.

10 Land Registration Act 2002 Sch 6 para 9(4).

11 See the Land Registration Act 2002 Sch 6 para 10; the Land Registration Rules 2003, SI 2003/1417, rr 194A-194G (added by SI 2008/1919); and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1033.

12 See **LAND REGISTRATION** vol 26 (2004 Reissue) PARAS 1033-1034.

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(vii) Rights of Ecclesiastical Patronage

1104. Registration and transfer of rights of patronage.

It is the duty of the registrar of each diocese to compile and maintain a register indicating in relation to every benefice in the diocese the person who is the patron of the benefice and containing such other information as may be prescribed¹. Subject to certain exceptions², no person is entitled to exercise any of the functions of a patron of a benefice unless he is registered as patron of that benefice³. The register is conclusive evidence of the matters registered⁴, subject to the possibility of rectification in certain limited circumstances⁵. However, no rectification of the register is possible where the entry in the register relating to any benefice has been adverse to the claim of any person for a period of more than 30 years, or, where the period of 30 years from the end of the registration period has not expired, the benefice has been held adversely to the claim of any person for a period of more than 30 years, unless all the persons interested agree to that rectification⁶.

1 Patronage (Benefices) Measure 1986 s 1(1). This register replaces that part of the register of title to freehold and leasehold land kept at Her Majesty's Land Registry relating to title to advowsons.

2 The exceptions contained within the Patronage (Benefices) Measure 1986 itself, eg under s 5 (rights of patronage exercisable otherwise than by a registered patron).

3 Patronage (Benefices) Measure 1986 s 1(2).

4 Patronage (Benefices) Measure 1986 s 1(4).

5 See the Patronage (Benefices) Measure 1986 s 4.

6 Patronage (Benefices) Measure 1986 s 4(2), repealing the Limitation Act 1980 s 25 (and limitation periods thereunder) as at 1 January 1989 (the end of the registration period pursuant to the Patronage (Benefices) Measure 1986 s 1(3)). The 1986 measure came into force on various dates between 1 January 1987 and 1 January 1989 by virtue of an Instrument of the Archbishops of Canterbury and York dated 31 December 1986. See also the Patronage (Benefices) Rules 1987, SI 1987/773; and **ECCLESIASTICAL LAW**.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1105. General period of limitation relating to mortgages.

(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND

(i) Recovery of Money Secured and Proceeds of Sale of Land

1105. General period of limitation relating to mortgages.

No claim¹ may be brought to recover any principal sum secured by a mortgage or other charge on property, whether real or personal², after the expiration of 12 years from the date when the right to receive the money accrued³. The right to receive any principal sum of money secured by a mortgage or other charge is not deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined⁴.

These provisions do not apply to foreclosure claims in respect of mortgaged land for which separate provision is made, under which normally the relevant period is also 12 years⁵.

It seems that the 12-year period of limitation relating to mortgages and other charges does not extend to the personal remedy in simple contract, as distinct from any remedy to enforce the charge, where payment of a simple contract debt is secured on property⁶; in the ordinary case of a charge by deed no such question will normally arise, as the periods of limitation on the contract and on the security are both 12-year periods⁷. A claim for the shortfall after sale of the mortgaged property is not a claim in simple contract⁸.

1 As to the meaning of 'claim' see PARA 915.

2 As to the former position where no limitation period was applicable to a claim to recover money secured by a charge on personalty as distinct from land see *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67, CA; *Bowyer v Woodman, ex p Clarke* (1867) LR 3 Eq 313; *Smith v Hill* (1878) 9 ChD 143; and *Re Edward's Will Trusts, Brewer v Gething* [1937] Ch 553, [1937] 3 All ER 58.

3 Limitation Act 1980 s 20(1). Section 20(1) has effect subject to the provisions which provide for the extension of limitation periods in the case of disability, acknowledgment etc: see ss 1, 28-31, 32; and PARA 1168 et seq. For an example of money secured by a charge see *Poole Corp v Moody* [1945] KB 350, sub nom *Moody v Poole Corp* [1945] 1 All ER 536, CA (apportioned expense of private street works); *Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668 (company bearer bonds); *Ezekiel v Orakpo* [1997] 1 WLR 340, CA (charging order on property obtained following judgment against defendant); *Gotham v Doodes* [2006] EWCA Civ 1080, [2007] 1 All ER 527, [2007] 1 WLR 86 (charge on bankrupt's home under the Insolvency Act 1986 s 313). As to the position where principal money secured by a charge is repayable by instalments see PARA 1107 note 6. As to the recovery of interest see PARA 1111.

The Limitation Act 1980 s 20 does not cease to apply when the security is subsequently realised: *West Bromwich Building Society v Wilkinson* [2005] UKHL 44, [2005] 4 All ER 97, [2005] 1 WLR 2303.

4 Limitation Act 1980 s 20(3); and see *Gotham v Doodes* [2006] EWCA Civ 1080, [2007] 1 All ER 527, [2007] 1 WLR 86 (in the case of a charge imposed by an order under the Insolvency Act 1986 s 313, the right to receive the money secured cannot predate an order for the sale of the property).

5 See the Limitation Act 1980 ss 15, 20(4); and PARA 1124. As to the amount of interest claimable as a condition of redemption see PARA 1137. Note that the disapplication of s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

6 The Limitation Act 1980 s 5 prescribes a six-year period for a claim in contract which is unqualified except in cases of equitable relief pursuant to s 36(1): see PARAS 952, 954. However, if, where the debt is a simple

contract debt, s 20(1) is read as being confined to the charge of the debt on property, conflict between s 5 and s 20(1) is avoided.

7 Limitation Act 1980 ss 8, 20(1); and see PARA 978.

8 *Bristol and West plc v Bartlett, Paragon Finance plc v Banks; Halifax plc v Grant* [2002] EWCA Civ 1181, [2002] 2 All ER (Comm) 1105, [2002] 4 All ER 544; applied in *Scottish Equitable v Thompson* [2003] EWCA Civ 211, [2003] HLR 690, [2003] All ER (D) 59 (Feb).

UPDATE

1105 General period of limitation relating to mortgages

NOTE 3--See *Yorkshire Bank Finance Ltd v Mulhall* [2008] EWCA Civ 1156, [2009] 2 All ER (Comm) 164 (charging order granted against property in which defendant had interest).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1106. Applicability of limitation to particular charges.

1106. Applicability of limitation to particular charges.

The limitation period of 12 years relating to mortgages and other charges¹ applies to a charge on premises for the recovery of a local authority's expenses in executing certain public health works² and to a charge on property in respect of expenses of street works³ or repairs to a dangerous structure near a highway⁴. The limitation period of 12 years does not apply to a charge on property in favour of the Commissioners for Revenue and Customs for unpaid inheritance tax⁵. It does, however, apply to a vendor's equitable lien for his purchase money⁶.

1 Ie under the Limitation Act 1980 s 20(1): see PARA 1105.

2 Ie under the Public Health Act 1936 s 291: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 123.

3 Ie under the Highways Act 1980 s 212: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 159. See also *Poole Corpn v Moody* [1945] KB 350, sub nom *Moody v Poole Corpn* [1945] 1 All ER 536, CA. It seems, however, that the limitation period is six years for the recovery of such expenses by proceedings under the Highways Act 1980 s 305(5): see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 923.

4 Ie pursuant to the Highways Act 1980 s 305(1), (7): see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 923. See also *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 QBD 1, CA.

5 See the Limitation Act 1980 s 37(2); and PARA 903. See also **INHERITANCE TAXATION** vol 24 (Reissue) PARAS 683, 690.

6 *Toft v Stephenson* (1851) 1 De GM & G 28. As to a vendor's equitable lien see **LIEN** vol 68 (2008) PARA 859 et seq. The Limitation Act 1980 s 20(1) applies to charges on personalty, as well as realty: see PARA 1105.

UPDATE

1106 Applicability of limitation to particular charges

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1107. Annuities.

1107. Annuities.

The annual instalments of an annuity are not principal sums secured by a mortgage or charge on property¹, nor are they interest payable in respect of money so secured².

If an annuity is charged on land, it is within the statutory definitions of 'rent' and 'rentcharge' for the purposes of limitation³, and therefore within the statutory definition of 'land' for those purposes⁴. Consequently the annuitant would normally⁵ recover only six years' arrears of the annuity⁶; while, if the annuity is charged on unregistered land and remains unpaid for 12 years, his title to it would be extinguished⁷.

There is no special period of limitation applicable to an annuity charged wholly on personality. If such an annuity is given by will, it is a legacy⁸. If it is granted by deed it would appear to be subject to the 12-year period applicable to claims on specialties⁹. It seems that a gift of such an annuity amounts to a gift of successive annual sums and that time begins to run in respect of each instalment only when the sum becomes payable¹⁰.

1 le for the purposes of the Limitation Act 1980 s 20(1): see PARA 1105.

2 le for the purposes of the Limitation Act 1980 s 20(5): see PARA 1111.

3 See the Limitation Act 1980 s 38(1); and PARA 1020.

4 See the Limitation Act 1980 s 38(1); and PARA 1018.

5 As to the position where there is a trust to pay the annuity and the trustee is debarred from relying on any period of limitation see PARA 1158.

6 See the Limitation Act 1980 ss 19, 20; and PARA 1033. It seems, however, that the clear intention of the 1980 Act is to allow 12 years for all capital money secured by a mortgage or charge on property, and that, although a principal sum secured may be payable by instalments, s 20(1) (see PARA 1105) and not s 19, will apply. It seems that there cannot in any case be any doubt that s 20(1) is the provision applicable where the mortgage deed contains a provision that in default of payment of any instalment the whole principal sum is to be payable.

7 See the Limitation Act 1980 s 17; and PARAS 1016, 1025. As to the construction of references to 'possession' in the case of an annuity see s 38(1), (8); and PARA 1072. Section 17 is disapplied in the case of a registered rentcharge: see the Land Registration Act 2002 s 96(1). As to non-payment under a registered rentcharge see PARAS 1032, 1078.

8 As to the nature of such an annuity and as to whether a six-year or 12-year period of limitation is applicable see PARA 1158.

9 See the Limitation Act 1980 s 8; and PARA 975.

10 See *Edwards v Warden* (1874) 9 Ch App 495 at 505 per James LJ (varied on another ground (1876) 1 App Cas 281, HL); *Roch v Callen* (1848) 17 LJ Ch 144; *Dower v Dower* (1885) 15 LR Ir 264 at 273; and *Jones v Withers* (1896) 74 LT 572, CA. Cf however *Re Ashwell's Will* (1859) John 112 at 117, where the entire annuity was considered to constitute one legacy, payment of an instalment constituting part payment.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1108. Proceedings for possession unaffected.

1108. Proceedings for possession unaffected.

The limitation provisions relating to mortgages and other charges¹ relate only to the recovery of money secured by a charge and do not affect any proceedings which a mortgagee has a right to take for obtaining possession of the property itself². Foreclosure claims are governed by separate provisions³.

¹ I.e. the Limitation Act 1980 s 20(1); see PARA 1105.

² See *Doe d Jones v Williams* (1836) 5 Ad & El 291 at 296; *Re Seager's Estate, Seager v Aston* (1857) 26 LJ Ch 809; *Re Conlan's Estate* (1892) 29 LR Ir 199; *Heath v Pugh* (1881) 6 QBD 345, CA (affd sub nom *Pugh v Heath* (1882) 7 App Cas 235, HL); *Wrixon v Vize* (1842) 3 Dr & War 104; *Dearman v Wyche* (1839) 9 Sim 570; *Du Vigier v Lee* (1843) 2 Hare 326; *Beamish v Whitney* [1908] 1 IR 38; and *Hugill v Wilkinson* (1888) 38 ChD 480. A claim by a legal mortgagee for payment of principal and interest due on his mortgage, brought in a claim for the administration of the real and personal estate of a deceased owner of the equity of redemption, was held to be a proceeding within the Real Property Limitation Act 1874 s 8 (repealed) (*Waters v Lloyd* [1911] 1 IR 153, CA), and may therefore be held to be a claim within the Limitation Act 1980 s 20(1).

³ See PARA 1124.

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1109. Guarantor's position.

If in a mortgage deed the mortgagor and a guarantor jointly and severally covenant for repayment of the mortgage debt, the limitation provisions relating to mortgages¹ do not appear to apply to a claim against the guarantor². In the case of a deed, the distinction is not normally material, for the period of limitation in respect of the guarantor's covenant is the same as for a claim to recover money secured by a charge³.

¹ I.e. the Limitation Act 1980 s 20(1); see PARA 1105.

² *Re Frisby, Allison v Frisby* (1889) 43 ChD 106, CA; and see *Re Powers, Lindsell v Phillips* (1885) 30 ChD 291, CA.

³ See the Limitation Act 1980 s 8; and PARA 1105. An agreement to act as guarantor, as a contract not a deed, may fall under the provisions of the Limitation Act 1980 relating to simple contracts: see s 5; and PARA 956 et seq. As to possible differences in the date of commencement of the periods see PARA 1112 note 2.

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PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE
OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1110. Limitation of right
to recover proceeds of sale of land.

1110. Limitation of right to recover proceeds of sale of land.

Subject to a beneficiary's rights to sue in respect of a fraud to which his trustee was privy, or to recover from his trustee trust property in the trustee's possession or converted to his use¹, no claim may be brought to recover proceeds of the sale of land after the expiration of 12 years from the date when the right to receive the money accrued².

1 See the Limitation Act 1980 s 21(1); and PARA 1140 et seq.

2 Limitation Act 1980 s 20(1).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1111. Arrears of interest charged on land.

1111. Arrears of interest charged on land.

No claim to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge¹ or payable in respect of proceeds of the sale of land, or to recover damages in respect of those arrears, may be brought after the expiration of six years from the date on which the interest became due². However, where, under a loan agreement, the lender's right to bring a claim to recover the interest accrues on a date other than that on which the interest is due, time will run from the date when, on a true construction of the loan agreement, he was first able to bring such a claim³. If a guarantor who has given a specialty to secure a payment of such interest is sued, it is not clear whether 12 years' arrears are recoverable from him⁴, for the money due from him is not secured by a charge⁵.

1 Eg interest on expenses for street works executed by a local authority charged on land under what is now the Highways Act 1980 s 212: see *Poole Corpn v Moody* [1945] KB 350, sub nom *Moody v Poole Corpn* [1945] 1 All ER 536, CA; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 159.

2 Limitation Act 1980 s 20(5); and see *Bristol and West plc v Bartlett*, *Paragon Finance plc v Banks*, *Halifax plc v Grant* [2002] EWCA Civ 1181, [2002] 2 All ER (Comm) 1105, [2002] 4 All ER 544. The Limitation Act 1980 s 20 does not cease to apply when the security is subsequently realised: *West Bromwich Building Society v Wilkinson* [2005] UKHL 44, [2005] 4 All ER 97, [2005] 1 WLR 2303. For the saving of certain rights of a subsequent incumbrancer and of a mortgagee of a future interest or life insurance policy see s 20(6)(a), (b); and PARAS 1117, 1119. The limitation imposed by s 20(5) does not apply to the recovery of interest in foreclosure claims in respect of mortgaged land (see s 20(4); and PARA 1124), nor, it seems, to the recovery of interest in foreclosure claims relating to mortgaged personalty where the mortgagor is seeking to redeem (see PARA 1129), nor does it apply in relation to redemption claims (see PARA 1137). See also *Holmes v Cowcher* [1970] 1 All ER 1224, [1970] 1 WLR 834 (although a claim by a mortgagee for interest unpaid for more than six years is statute-barred by virtue of what is now Limitation Act 1980 s 20(5), the mortgagor, as a condition of redeeming, must pay all arrears of interest, however old); and *Ezekiel v Orakpo* [1997] 1 WLR 340, CA (claim to enforce charging order obtained following judgment against defendant was held to be a claim to recover a sum due to the claimant as a secured creditor and, as such, the claimant was not restricted to recovering only six years' interest out of the proceeds of enforcing his security; *Poole Corpn v Moody* [1945] KB 350, sub nom *Moody v Poole Corpn* [1945] 1 All ER 536, CA, not followed).

3 See *Barclays Bank plc v Walters* (1988) Times, 20 October, CA.

4 Ie under the Limitation Act 1980 s 8: see PARA 975.

5 See *Re Powers*, *Lindsell v Phillips* (1885) 30 ChD 291, CA; and *Re Frisby*, *Allison v Frisby* (1889) 43 ChD 106, CA, where the point was left open. See also PARA 1109.

UPDATE

1111 Arrears of interest charged on land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1112. When time begins to run.

1112. When time begins to run.

The period of limitation of 12 years is reckoned from the date when the right to receive the money has accrued¹. A right to receive does not, it seems, in this connection mean a right to enforce payment².

¹ See the Limitation Act 1980 s 20(1); and PARA 1105. As to the effect of disability see PARA 1170 et seq.

² See *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 QBD 1 at 6, CA, per Lord Esher MR and at 9 per Lindley LJ; *Re Deeny, Deeney v Doherty and Deeney* [1933] NI 80, CA; cf *Re Pardoe, McLaughlin v Penny* [1906] 1 Ch 265 at 269 per Kekewich J (revsd on another point [1906] 2 Ch 340, CA). The words 'right to receive' are, it has been said, different in meaning from, and apparently used in contrast to, the accrual of a cause of action, which is the point from which time begins to run for the purpose of eg the Limitation Act 1980 ss 2, 5: see *Hornsey Local Board v Monarch Investment Building Society*.

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1113. When the right accrues.

A vendor's lien for unpaid purchase money arises when the contract is signed¹, but his right to receive the purchase money, which is secured by his lien, does not accrue² until the time for completion arrives, or until the title is accepted if that is subsequent to the time fixed for completion³. The vendor's lien for unpaid purchase money extends to personal property⁴.

If the whole of a testator's real estate is subject to a charge and a part of the real estate is specifically devised to one person and the residue is devised to other persons, and the charge is paid out of the proceeds of the sale of the residue, the devisees of the residue are entitled to a contribution from the specific devisees, even though the residue is subject to a trust for the payment of the testator's debts, and time runs against this right to contribution from the payment of the charge out of the residue⁵. As the same provision now applies to all forms of property subject to charges⁶, the same principle must now apply as between residuary personalty and personalty specifically bequeathed.

1 See **LIEN** vol 68 (2008) PARA 860.

2 Ie within the meaning of the Limitation Act 1980 s 20(1): see PARA 1105.

3 *Toft v Stevenson* (1854) 5 De GM & G 735; and see *Re Birmingham, Savage v Stannard* [1959] Ch 523 at 529, [1958] 2 All ER 397 at 400.

4 *Re Stucley, Stucley v Kekewich* [1906] 1 Ch 67, CA. See also **LIEN** vol 68 (2008) PARA 860.

5 *Re Allen, Bassett v Allen* [1898] 2 Ch 499.

6 Ie the Limitation Act 1980 s 20(1): see PARA 1105.

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1114. Money payable to trustees.

Trustees have a statutory power to give receipts which are a sufficient discharge of any person liable to pay¹. If, therefore, money is charged on land in favour of trustees upon trust for certain persons for life with remainder over, time runs from the date when the money becomes payable². If however, the trustees do not act and no trustees are appointed in their place, time does not run against the remainderman until the determination of the life interests³.

1 See the Trustee Act 1925 s 14(1). Except where the trustee is a trust corporation, s 14 does not enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a trust of land, or for capital money arising under the Settled Land Act 1925: Trustee Act 1925 s 14(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 3(1), (3)). In these cases the law before the Conveyancing Act 1881 (repealed) would appear to be applicable. A single personal representative may still give valid receipts: Law of Property Act 1925 s 27(2) (substituted by the Law of Property (Amendment) Act 1926 Schedule; amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 4(1), (8)). A receipt of Settled Land Act trustees (including the receipt of a sole trustee which is a trust corporation), or of the personal representatives of the last surviving or continuing trustee, for any money or securities paid to or by the direction of the trustees, trustee, or representatives, as the case may be, effectually discharges the payer: Settled Land Act 1925 s 95.

As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

2 As to the general powers of trustees see **TRUSTS** vol 48 (2007 Reissue) PARA 971 et seq.

3 *Carroll v Hargrave* (1870) 5 IR Eq 123; Limitation Act 1980 s 21(1); and see PARA 1143.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1115. Charges imposed on land of judgment debtor.

1115. Charges imposed on land of judgment debtor.

The High Court or a county court may impose a charge on land or an interest in land of any debtor for the purpose of enforcing a judgment or order of the court¹, and may make conditions as to the time when the charge is to become enforceable². Such a charge is, it seems, an 'other charge on property' for the purposes of the Limitation Act 1980³, and the right to receive the money accrues when the charge is perfected by the making of the charging order absolute or on such other date as the court may make the charge enforceable⁴.

1 See the Charging Orders Act 1979 ss 1-3; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1467 et seq.

2 Charging Orders Act 1979 s 3(1).

3 See the Limitation Act 1980 s 20(1); and PARA 1105.

4 The remedy is barred six years after the date when the judgment became enforceable: Limitation Act 1980 s 24; and see PARA 1010.

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1116. Arrears of interest secured by covenant in mortgage or charge.

Whether or not, in a mortgage or charge, there is a covenant to pay interest, no claim may be brought (with certain exceptions¹) to recover arrears of interest, or damages in respect of those arrears, after six years from the date on which the interest became due².

1 See PARAS 1117-1120.

2 See the Limitation Act 1980 ss 8(2), 20(5); and PARAS 975, 1111.

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1117. Arrears where property comprises future interest or life insurance policy.

Where the property subject to a mortgage or charge comprises any future interest or life insurance policy, and it is a term of the mortgage or charge that arrears of interest are to be treated as part of the principal sum of money secured by the mortgage or charge, interest is not deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued¹.

¹ Limitation Act 1980 s 20(7). As to the date when the right to receive the principal money is deemed to have accrued in the case where the mortgaged property comprises a future interest or life insurance policy see PARA 1105.

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1118. Interest on taking accounts between mortgagor and mortgagee.

In accounts between a mortgagor and mortgagee in possession the mortgagee is, it seems, bound to account for all rents and profits received during the time of his possession, however long that may be¹, so that all interest accrued due during that time would have to be brought into account. All the arrears of interest unpaid would be treated as due in a redemption claim or a foreclosure claim².

1 *Hood v Easton* (1856) 2 Jur NS 729.

2 See PARAS 1128, 1137.

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1119. Arrears recoverable by mortgagee when land has been in possession of prior incumbrancer.

If a prior mortgagee or other incumbrancer has been in possession of the property charged, and a claim¹ is brought within one year of the discontinuance of that possession by the subsequent incumbrancer, the subsequent incumbrancer may recover by that claim all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeds six years².

Arrears of interest due for a period preceding the possession of the prior incumbrancer are not, however, recoverable by virtue of this provision³. If a claim is brought by a person entitled to an incumbrance on a reversionary interest, the possession of a person entitled to an incumbrance on the interest of a tenant for life of the property, during the life of the tenant, does not bring the case within the provision⁴.

An agreement between a later incumbrancer and a prior incumbrancer in possession that the later charge is to have precedence over the earlier does not exclude the later incumbrancer from the benefit of the provision, if he has no right to take possession of the land⁵. If the owner of incumbered land takes an assignment of an incumbrance to a trustee for himself then, although he is in possession, neither he nor his trustee is an incumbrancer within the meaning of this provision, and a subsequent incumbrancer will not in that case have the benefit of it⁶.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 Limitation Act 1980 s 20(6). 'Incumbrancer' here includes a judgment creditor: *Henry v Smith* (1842) 2 Dr & War 381 at 390. It is necessary that the subsequent incumbrancer's right to sue for the principal sum should not have been barred: see PARA 1123 text and note 5.

3 *Montgomery v Southwell* (1843) 2 Con & Law 263.

4 *Vincent v Going* (1844) 1 Jo & Lat 697; and see *Smith v Hill* (1878) 9 ChD 143.

5 *Drought v Jones* (1840) 21 Eq R 303.

6 *Chinnery v Evans* (1864) 11 HL Cas 115.

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1120. Extension of limitation periods.

The provisions which lay down periods of limitation for claims to recover money secured by a mortgage or other charge on property¹ and for foreclosure claims² have effect subject to the statutory provisions which provide for the extension of periods of limitation in the case of disability, acknowledgment, part payment, fraud and mistake³.

1 Ie the Limitation Act 1980 s 20: see PARAS 1105, 1111, 1117, 1119.

2 Ie the Limitation Act 1980 s 20(2): see PARAS 1124-1125.

3 Limitation Act 1980 s 1(2). See PARA 1168 et seq.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/2. PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE OF LAND/(i) Recovery of Money Secured and Proceeds of Sale of Land/1121. Effect of payment of mortgage debt.

1121. Effect of payment of mortgage debt.

Where the mortgage takes effect by demise or subdemise the mortgage term ceases when the money secured by the mortgage has been discharged¹.

A statutory receipt indorsed on a mortgage normally operates, where the mortgage takes effect by demise or subdemise, as a surrender of the term, or, where the mortgage does not take effect by demise or subdemise, as a reconveyance of the relevant interest to the person entitled to the equity of redemption, and in either case as a discharge of the mortgaged property from all principal and interest and all claims under the mortgage².

1 See the Law of Property Act 1925 ss 5, 116; and **MORTGAGE** vol 77 (2010) PARA 642.

2 See the Law of Property Act 1925 s 115(1); and **MORTGAGE** vol 77 (2010) PARA 645.

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1122. Third person in possession at date of mortgage.

If the mortgagor is himself out of possession at the date of the mortgage, then, whether the property is in the occupation of a tenant or of someone holding without a title, the period of limitation in favour of the person in possession and as against the mortgagee, in cases where no payment of principal or interest has been made¹, must be calculated from the time at which, if no mortgage had been executed, the statute of limitation would begin to run against the title of the mortgagor or those through whom he claims, as the mortgagee is a person who claims through the mortgagor².

1 As to the effect of a payment of principal or interest in such a case see PARA 1212.

2 See the Limitation Act 1980 ss 15(6), 38(5), Sch 1 paras 1-3; and PARAS 1025, 1035. Note that the disapplication of s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

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1123. Effect of dealings with mortgage debt or mortgaged property.

In any claim¹ by a mortgagee, if the person in possession of the land, benefice or personal property in question or the person liable for the mortgage debt makes any payment in respect of the debt (whether of principal or interest) the right is deemed to have accrued on and not before the date of the payment². However, a mortgagor cannot take advantage of this provision as against a third person in possession³. A person who pays off a mortgage debt, and takes at once a transfer of the mortgage from the mortgagee and of the equity of redemption from the mortgagor, is a person claiming under a mortgage to the extent of the interest which he purchases from the mortgagee, but not with regard to the interest which he affects to purchase from the mortgagor⁴. If a person buys from a mortgagee who exercises a power of sale, where his title is unbarred, the purchaser takes the whole interest, legal and equitable, in the mortgaged land, and the effect of such a sale, it seems, is that a person who has by possession acquired a title under the statute of limitation to the equity of redemption loses his title⁵.

The fact that a first mortgagee has taken possession after time has begun to run against a second mortgagee does not suspend the running of time against the second mortgagee⁶.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 See the Limitation Act 1980 s 29(3); and PARAS 1182, 1200.

3 *Thornton v France* [1897] 2 QB 143, CA.

4 *Doe d Baddeley v Massey* (1851) 17 QB 373; and see *Ford v Ager* (1863) 2 H & C 279.

5 As to the effect of a sale by the mortgagee see the Law of Property Act 1925 ss 88(1), 89(1); and **MORTGAGE** vol 77 (2010) PARA 447.

6 *Samuel Johnson & Sons Ltd v Brock* [1907] 2 Ch 533, not following *Kibble v Fairthorne* [1895] 1 Ch 219. The second mortgagee may improve his position by a claim on the personal covenant, by redeeming the first mortgage or by exercising his power of sale (subject to the first mortgage) or applying to the court for the enforcement of his security: see generally **MORTGAGE** vol 77 (2010) PARA 101 et seq.

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(ii) Foreclosure

1124. General principles.

The limitation provisions relating to claims to recover land¹ apply to foreclosure claims in respect of land². A foreclosure claim in respect of mortgaged personal property³ may not be brought after the expiration of 12 years from the date when the right to foreclose accrued⁴, although if the mortgagee was in possession of the mortgaged property after that date, the right to foreclose on the property which was in his possession is not deemed to have accrued until the date on which his possession discontinued⁵.

1 In particular the Limitation Act 1980 s 15, Sch 1 paras 1-13: see PARA 1025 et seq. As to the meaning of 'land' see s 38(1); and PARA 1018. Note that the disapplication of s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

2 See the Limitation Act 1980 s 20(4). However, nothing in s 20 itself applies to such a claim: s 20(4). As to the present use of foreclosure claims see PARA 934 note 3.

3 'Personal property' does not include chattels real: Limitation Act 1980 s 38(1). As to the remedy of foreclosure in respect of personal property see eg *General Credit and Discount Co v Glegg* (1883) 22 ChD 549; and see **MORTGAGE** vol 77 (2010) PARA 566 et seq. A mere pledgee of a chattel cannot foreclose: *Carter v Wake* (1877) 4 ChD 605. Formerly, there was no statute of limitation applicable to the foreclosure of a mortgage of personal property: see *London and Midland Bank v Mitchell* [1899] 2 Ch 161.

4 Limitation Act 1980 s 20(2). The period of limitation is subject to extension in the case of disability, acknowledgment, part payment etc: see PARAS 1120, 1168 et seq.

5 Limitation Act 1980 s 20(2).

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1125. Running of time.

In relation to a claim for foreclosure of land or personal property, time runs from the date fixed for the payment of the principal, the legal date for redemption of the mortgage¹. It seems that if a sum is payable on demand, and on the true construction of the terms of the mortgage deed the sum is not recoverable until it has been demanded, time runs only from the making of a demand². A demand appears at any rate to be necessary where the security is collateral³.

If the interest mortgaged is a reversionary interest in land, time does not run for the purposes of a foreclosure claim until the interest falls into possession⁴, although the personal remedy to recover the mortgage debt may then be barred⁵. If the interest mortgaged is a reversionary interest in personalty or a life insurance policy, the right to foreclose is not deemed to accrue until the reversionary interest falls into possession or the policy matures or is determined⁶.

1 *Kibble v Fairthorne* [1895] 1 Ch 219 at 225; *Purnell v Roche* [1927] 2 Ch 142. It seems that the claim, which is one to recover the equity of redemption (*Wrixon v Vize* (1842) 3 Dr & War 104 at 120), may fall within the Limitation Act 1980 Sch 1 para 3 as regards land (see PARA 1040): *Samuel Johnson & Sons Ltd v Brock* [1907] 2 Ch 533 at 536. As to the effect of a foreclosure order see PARA 1127.

2 See *Lloyds Bank Ltd v Margolis* [1954] 1 All ER 734 at 737-738, [1954] 1 WLR 644 at 649 per Upjohn J. Cf *Re Turner, Turner v Spencer* (1894) 43 WR 153 (covenant to pay on death of tenant for life); *Hamill v Mathews* (1909) 44 ILT 25, CA (covenant that principal should not be called in for 20 years).

3 *Lloyds Bank Ltd v Margolis* [1954] 1 All ER 734, [1954] 1 WLR 644 (charge to secure current account at bank; proceedings for foreclosure or sale); *Re Brown's Estate, Brown v Brown* [1893] 2 Ch 300 (claim on covenant by guarantor); cf *Wakefield and Barnsley Union Bank Ltd v Yates* [1916] 1 Ch 452 at 460, CA (wife mortgaged property to secure her husband's current account, money secured expressed to be payable on demand; held right to foreclosure accrued immediately on execution of deed).

4 Limitation Act 1980 ss 15(6), 20(4), Sch 1 para 4; see also PARAS 1044, 1124. Note that the disapplication of s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

5 *Hugill v Wilkinson* (1888) 38 ChD 480; *Re Lake's Trusts* (1890) 63 LT 416; *Re Conlan's Estate* (1892) 29 LR 199.

6 See the Limitation Act 1980 s 20(3). Where the mortgaged property comprises a future interest, the effect of s 20(3) is to put a mortgagee who seeks to recover his principal by virtue of his charge, or a mortgagee of personalty who seeks to foreclose, in substantially the same position, as regards the date from which time will run, as a mortgagee of land who is seeking foreclosure under s 15(1): see Sch 1 para 4.

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1126. Administrator's right.

If an intestate's estate becomes entitled to a charge on land in the interval between his death and the grant of administration, time runs against the administrator, for the purposes of foreclosure, from the date when the principal became payable, even if administration is not granted until after that date¹.

¹ See the Limitation Act 1980 ss 20(4), 26; and PARA 923. See also **EXECUTORS AND ADMINISTRATORS** vol 17 vol 17(2) (Reissue) PARA 816.

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1127. Effect of foreclosure order absolute.

An order of foreclosure absolute obtained by a legal mortgagee of land vests the ownership and the beneficial title to the land in him for the first time; a fresh right accrues to him at the date of the order, and a claim against the former mortgagor or his successors to recover the land within 12 years of the order is not barred, even if more than 12 years have elapsed since the mortgage was created and since the last payment of principal or interest secured by the mortgage¹.

Where any property, real or personal, vested in trustees by way of security becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it is held by them in trust (1) to apply the income from the property in the same manner as interest paid on the mortgage debt would have been applicable; and (2) if the property is sold to apply the net proceeds of sale, after payment of costs and expenses, in the same manner as repayment of the mortgage debt would have been applicable².

1 *Pugh v Heath* (1882) 7 App Cas 235, HL. The effect of a foreclosure order absolute in respect of freehold or leasehold land is to vest the fee simple or the whole leasehold term in the mortgagee: Law of Property Act 1925 ss 88(2), 89(2). Nevertheless, a foreclosure absolute may in some circumstances be reopened: *Campbell v Holyland* (1877) 7 ChD 166; *Mexborough UDC v Harrison* [1964] 2 All ER 109, [1964] 1 WLR 733. As to foreclosure generally see **MORTGAGE** vol 77 (2010) PARA 566 et seq.

2 Law of Property Act 1925 s 31(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 2 para 1(1), (2)). This applies whether a right of redemption is discharged before or after 1 January 1997 and without prejudice to any dealings or arrangements made before that date: Trusts of Land and Appointment of Trustees Act 1996 Sch 2 para 1(7). 'Property' includes any thing in action, and any interest in real or personal property: Law of Property Act 1925 s 205(1)(xx). Note, however, that no period of limitation applies to a claim for redemption of registered land or a registered rentcharge, or a claim for redemption of mortgaged personalty: see PARA 1129.

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1128. Amount of interest.

The provision by which only six years' arrears of interest are recoverable by claim by a mortgagee¹ does not apply to foreclosure claims in respect of land².

It would appear that the principles which formerly applied to the recovery of interest in foreclosure claims in respect of land now apply in relation to foreclosure claims in respect of mortgaged personalty, as the provision restricting the recovery of interest now applies to all mortgages and not merely to mortgages of land³, and there is no exception in favour of foreclosure claims in respect of mortgaged personalty such as exists in the case of foreclosure claims in respect of mortgaged land⁴.

1 See the Limitation Act 1980 s 20(5); see PARA 1111.

2 Limitation Act 1980 s 20(4).

3 See the Limitation Act 1980 s 20(5); and PARA 1111.

4 See the Limitation Act 1980 s 20(4); and PARA 1124.

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(iii) Redemption

1129. When mortgagor is barred.

When a mortgagee of unregistered land¹ has been in possession² of any of the mortgaged land for a period of 12 years, no claim to redeem the land of which the mortgagee has been so in possession may thereafter be brought by the mortgagor or any person claiming through him³ and the mortgagor's title is extinguished⁴. A mortgagee may not redeem against prior incumbrancers after his rights against the mortgagor have been barred by limitation, for he has thereby lost all interest in the land and with it his status as mortgagee⁵.

No period of limitation applies to a claim for redemption of registered land or a registered rentcharge⁶. Nor does any period of limitation apply to a claim for redemption of mortgaged personalty⁷, but if the personalty is included in one mortgage with unregistered land, and one proviso for redemption applies to both land and personalty, the personalty may not be redeemed after the right to redeem the land has been barred⁸.

1 As to the meaning of 'land' see PARA 1018.

2 This applies to a mortgagee receiving rent from a tenant in possession; receipt of such rent by a mortgagee for 12 years will bar the mortgagor's right to redeem: *Ward v Carttar* (1865) LR 1 Eq 29; *Markwick v Hardingham* (1880) 15 ChD 339, CA. Possession of land must be considered in every case with reference to the peculiar circumstances: see *Lord Advocate v Lord Lovat* (1880) 5 App Cas 273 at 288, HL; and *Kirby v Cowderoy* [1912] AC 599, PC, where the only act of possession of which the mortgaged land was capable was performed by the mortgagee with the mortgagor's knowledge, and that act was held sufficient possession. The mortgagee must have been in possession as mortgagee: *Hyde v Dalloway* (1843) 2 Hare 528; *Hodgson v Salt* [1936] 1 All ER 95.

3 Limitation Act 1980 s 16. As to the circumstances in which one person is deemed to claim through another see PARA 1025. As to the extension of the period by acknowledgment of title or part payment see PARA 1182 et seq. As to a sale by the mortgagee and his right to retain the proceeds see PARA 1137.

Real estate held by way of mortgage devolves on the personal representative and the deceased's real and personal estate are assets for the payment of his debts: see the Administration of Estates Act 1925 ss 1, 3(1)(ii), 32(1); and **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 363-364, 369, 387. As to the right of a mortgagee who has acquired a title by possession to enlarge the mortgage term into a fee simple see PARA 1099.

4 *Young v Clarey* [1948] Ch 191, [1948] 1 All ER 197.

5 See *Cotterell v Price* [1960] 3 All ER 315, [1960] 1 WLR 1097, where it was also held that the doctrine that time does not run during bankruptcy does not assist a creditor who relies on his security and whose claim is therefore outside the bankruptcy proceedings.

6 See the Land Registration Act 2002 s 96(2). As to the rationale behind this provision see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) paras 14.15-14.18.

7 In such a case equity will not apply the statutory provision applicable to land by analogy: *Charter v Watson* [1899] 1 Ch 175 at 180-181; *Weld v Petre* [1929] 1 Ch 33, CA; and see **EQUITY** vol 16(2) (Reissue) PARAS 919-920. In the case of a mixed fund the right to redeem personalty has been held to be barred with the right to redeem realty: *Charter v Watson*.

8 *Charter v Watson* [1899] 1 Ch 175.

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1130. Effect of receipt of rent by mortgagee.

If a mortgagee of unregistered land on lease receives the rent reserved for 12 years, the mortgagor's right to redeem will be barred, and the mortgagee will gain a title to the reversion as against the tenant who makes the payment¹.

¹ See PARA 1099.

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1131. Settlement of equity of redemption.

Where the mortgagee of unregistered land goes into possession¹ time runs against the mortgagor and all persons claiming through him; if, therefore, an equity of redemption is settled and, after the settlement takes effect, the mortgagee goes into possession, all persons claiming under the settlement will be barred of their right to redeem in 12 years from the mortgagee's going into possession, and it is immaterial at what times their several estates take effect in possession².

1 As to the meaning of 'possession' see PARA 1129 note 2.

2 *Browne v Bishop of Cork* (1839) 1 Dr & Wal 700.

As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

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1132. Extension of time to redeem by term of the mortgage.

If the mortgage contract with regard to unregistered land provides in terms that the mortgagor may redeem at any time during a period extending beyond the 12 years, the mortgagor's title has been held not to be barred 12 years after the mortgagee's possession commenced¹.

¹ *Alderson v White* (1858) 2 De G & J 97 at 109.

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1133. Tenant for life in possession as mortgagee.

If a tenant for life¹ of an estate pays off a charge on the estate, he is, in the absence of evidence of an intention to put an end to the charge, entitled to it for his own benefit; and although 12 years elapse before his death without anything being paid on account of the charge or any acknowledgment being given, his representatives are entitled to the charge after his death as against the remaindermen².

If therefore, a mortgagee in possession purchases a life interest in the equity of redemption, time will not run during the continuance of the life interest against those entitled in remainder to the equity of redemption³.

Similarly, where there are first and second mortgages in favour of two sets of trustees and a member of both sets receives the rents and applies them for over 12 years in paying off the capital and interest of the first mortgage, time will not run against the second mortgagees, as the hand to pay and to receive the money due to the first mortgagees is the same⁴.

1 As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

2 *Burrell v Earl of Egremont* (1844) 7 Beav 205; *Lord Carbery v Preston* (1850) 13 I Eq R 455; *Baldwin v Baldwin* (1855) 4 I Ch R 501; cf *Lord Kensington v Bouverie* (1855) 7 HL Cas 557; *Clarke v Bodkin* (1851) 13 I Eq R 492.

3 *Hyde v Dallaway* (1843) 2 Hare 528.

4 *Hodgson v Salt* [1936] 1 All ER 95.

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1134. Mortgage in form of trust.

A mortgage made by conveyance to a trustee on trust to sell and to pay to the mortgagee the principal of the mortgage debt and interest and to hand over the surplus to the mortgagor has been held to be within the statutory provisions relating to the limitation of redemption claims in respect of unregistered land¹. In such a case, when the mortgagor's right of redemption was barred the trust for the surplus money was also extinguished².

1 *Locking v Parker* (1872) 8 Ch App 30; *Re Alison, Johnson v Mounsey* (1879) 11 ChD 284, CA. The statutory provision by which a mortgage of an estate in fee simple is only capable of being created by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage, applies to mortgages by way of trust for sale, whether or not the land is registered land: see the Law of Property Act 1925 s 85(1), (3) (amended by the Land Registration Act 2002 Sch 11 para 2(1), (6)).

The Trusts of Land and Appointment of Trustees Act 1996, which came into force on 1 January 1997, introduced a new unitary system of holding land on trust which replaces the existing dual system of the trust for sale and the strict settlement. In the case of every trust for sale of land created by disposition there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land: s 4; and see PARA 1023. As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the 1996 Act see PARAS 1022, 1101.

2 *Chapman v Corpe* (1879) 41 LT 22; *Re Loveridge, Pearce v Marsh* [1904] 1 Ch 518.

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1135. Receipt of rents by mortgagor's solicitor.

Where a solicitor pays off the mortgage debt of a client and then receives the rents of the property, he may be deemed to have acted as his client's agent, and in that case time does not run in his favour as mortgagee in possession¹.

¹ *Ward v Carttar* (1865) LR 1 Eq 29. As to a solicitor acting as his client's agent see generally **LEGAL PROFESSIONS** vol 66 (2009) PARA 764.

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PARTICULAR CAUSES OF ACTION/(3) MONEY SECURED ON PROPERTY OR PROCEEDS OF SALE
OF LAND/(iii) Redemption/1136. Disabilities.

1136. Disabilities.

The statutory provisions providing for the extension of the limitation period in cases of disability¹ apply to the disability of the mortgagor of unregistered land who seeks to redeem in the same way as they apply to any other claimant².

¹ I.e. the Limitation Act 1980 s 28; see PARA 1170 et seq.

² Limitation Act 1980 s 1(2). The 1980 Act provides an absolute limit (longstop) of 30 years for a claim to recover unregistered land: see s 28(4). See also PARA 1172.

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1137. Interest claimable on redemption.

In a redemption claim a mortgagor can only redeem on payment of all arrears of interest¹. If the proceeds of the sale of mortgaged premises have been paid into court, and the mortgagor or his representatives apply for payment of the surplus after satisfaction of the mortgage debt and interest, the proceedings are analogous to a redemption claim, and the application will only be granted on the mortgagor paying all arrears of interest².

If a mortgagee sells the mortgaged property under a power of sale, he is entitled to retain all arrears of interest³. A first mortgagee is not, however, entitled, after his claim as first mortgagee has been satisfied, to withhold the surplus proceeds of sale from a second mortgagee whose rights are not barred or from other persons entitled to the mortgaged property and authorised to give a receipt for the proceeds of sale. An application by the second mortgagee against the first mortgagee and other persons interested in the surplus proceeds for the determination of his rights with regard to the fund is in substance a claim by a beneficiary for the execution of a trust, and not a claim for the recovery of interest in respect of money secured by a mortgage or charge⁴, and consequently the recovery of arrears of interest would not appear to be limited to six years⁵.

1 *Re Lloyd, Lloyd v Lloyd* [1903] 1 Ch 385, CA; *Dingle v Coppen, Coppen v Dingle* [1899] 1 Ch 726; *Holmes v Cowcher* [1970] 1 All ER 1224, [1970] 1 WLR 834. *Re Lloyd, Lloyd v Lloyd* applies only when the mortgage is a subsisting mortgage and has not been barred by the Limitation Act 1980 s 17 (*Re Hazeldine's Trusts* [1908] 1 Ch 34, CA; and see PARA 1095); it applies only to proceedings in the nature of a redemption claim (*Re Owen Lewis' Estate, ex p Kirke* [1903] 1 IR 348). As to the six-year period of limitation applicable to the recovery of interest in proceedings by the mortgagee other than foreclosure claims in respect of land and proceedings in which the mortgagor is seeking to redeem see PARAS 1108, 1128. As to a claimant's right, in a claim in which only six years' arrears are recoverable out of the land, to recover out of the land the difference between six and 12 years' arrears, where the claimant can recover the difference by a personal claim against a third person and the third person can recover it by way of indemnity out of the land see *Harrison v Duignan* (1842) 2 Dr & War 295; *Byrne v Duignan* (1845) 3 Jo & Lat 116; and *Willson v Leonard* (1840) 3 Beav 373. If land is charged with a debt but there is no right of foreclosure and the debt is statute-barred, and the land is in the hands of a trustee who enters into possession in the interest of the persons entitled to the land, and who is entitled in his own right to the debt on which nothing has been paid, a reconveyance of the land by the trustee to the persons entitled may be ordered without requiring the payment of the debt: *Shea v Moore* [1894] 1 IR 158, CA.

2 *Edmunds v Waugh* (1866) LR 1 Eq 418; *Re Lloyd, Lloyd v Lloyd* [1903] 1 Ch 385, CA. Cf *Re Blennerhassett's Estate* [1911] 1 IR 16, CA; *Ocean Accident and Guarantee Corp Ltd and Hewitt v Collum and Archdall* [1913] 1 IR 328 (claim by second mortgagee for an account of the rents and profits received by the first mortgagee after payment of the mortgage held not barred, although the first mortgagee was not in possession).

3 *Re Marshfield, Marshfield v Hutchings* (1887) 34 ChD 721. If the mortgagee sells after being in possession for 12 years he may keep the entire proceeds of sale, for the title of the mortgagor and those claiming under him is barred: *Young v Clarey* [1948] Ch 191, [1948] 1 All ER 197; *Re Alison, Johnson v Mounsey* (1879) 11 ChD 284, CA.

4 Ie a claim within the Limitation Act 1980 s 20(5): see PARA 1111.

5 *Re Thomson's Mortgage Trusts, Thomson v Bruty* [1920] 1 Ch 508.

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(iv) Recovery of Land

1138. Limitation of mortgagee's right to recover land.

A mortgagee's right¹ to enter upon the mortgaged land or to bring a claim for its recovery or delivery of possession, if no principal or interest is paid in respect of the mortgage, is normally barred 12 years after the right has accrued to him or someone through whom he claims². This limitation period applies in the case of registered, as well as unregistered, land³.

1 As to the rights of mortgagor and mortgagee generally see **MORTGAGE** vol 77 (2010) PARA 101 et seq.

2 Limitation Act 1980 s 15(1); and see PARA 1025 et seq. As to the effect of part payment of principal or interest see PARAS 1120, 1182. The mortgagee's personal remedies to recover the mortgage debt are governed by s 5 (where the debt is a simple contract debt), or by s 8 (where the mortgage is by deed): see PARA 1105.

3 The disapplication of the Limitation Act 1980 s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

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1139. Running of time.

Where there has been no acknowledgment and no payment of principal or interest¹, the date from which time runs against the mortgagee depends partly on the nature of the property mortgaged², partly on the nature of the remedy which the mortgagee seeks to enforce, and partly on the form of the mortgage deed. The date from which time runs in the case of a claim for foreclosure has been previously considered³. If in the case of an interest in land in possession, the mortgagee seeks to enter or recover possession of the land by a possession claim, then, in the case of a mortgage in the ordinary form, time runs from the date of the mortgage, from which time the mortgagee has the right of possession⁴, and this is so even when the mortgage contains a covenant that it is lawful for the mortgagee to enter after default has been made in payment⁵. If, however, there is a provision in the mortgage for quiet possession by the mortgagor until default upon a certain day and the mortgage deed is executed by the mortgagee, the deed operates as a redemise by the mortgagee until the day named; until that day, therefore, a claim for possession will not lie, nor will time run against such a claim⁶.

The time within which a right can be enforced is extended in certain cases of disability⁷, but in no case is the period of limitation to exceed 30 years⁸.

1 As to the extension of the limitation period in cases of acknowledgment and part payment see PARA 1182 et seq.

2 As to reversionary interests see the Limitation Act 1980 s 20(3); and PARA 1105.

3 See PARA 1125.

4 *Doe d Roylance v Lightfoot* (1841) 8 M & W 553; and see *Rogers v Grazebrook* (1846) 8 QB 895; and *Green v Burns* (1879) 6 LR Ir 173. In this event the claim, which is one to recover possession of the land, falls within the Limitation Act 1980 s 15(1); see PARA 1025. Note that the disapplication of s 15 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

5 *Doe d Roylance v Lightfoot* (1841) 8 M & W 553.

6 *Wilkinson v Hall* (1837) 3 Bing NC 508.

7 See the Limitation Act 1980 ss 1(2), 28; and PARA 1170 et seq.

8 Limitation Act 1980 s 28(4).

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(4) TRUST PROPERTY AND ESTATES OF DECEASED PERSONS

(i) Claims in respect of Trust Property

A. IN GENERAL

1140. Exclusion from protection in certain cases.

No period of limitation prescribed by the Limitation Act 1980 applies to a claim¹ by a beneficiary under a trust², being a claim in respect of any fraud³ or fraudulent breach of trust⁴ to which the trustee was a party or privy⁵, or to recover from the trustee trust property or the proceeds of it in the trustee's possession, or previously received by the trustee and converted to his use⁶. Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any claim brought to recover trust property in accordance with the above provisions is limited to the excess over his proper share, provided the trustee acted honestly and reasonably in making the distribution⁷. It makes no difference whether or not the trust is an express trust⁸. If, however, the claim is not one of these types, the mere fact that property is trust property does not prevent time from running⁹.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 For this purpose 'trust' and 'trustee' have the same meaning as in the Trustee Act 1925 (see s 68(1) para (17); and **TRUSTS** vol 48 (2007 Reissue) PARA 601); Limitation Act 1980 s 38(1). Accordingly, the expressions extend to implied and constructive trusts, to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative: see PARAS 1149-1152. It seems, however, that a trustee in bankruptcy is not a trustee for the purposes of s 21: see *Re Cornish, ex p Board of Trade* [1896] 1 QB 99, CA. It is necessary to distinguish between two possible uses of the term 'constructive trust'; the first covers those cases where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust and is not impeached by the claimant, while the second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the claimant; only the first type falls within the Limitation Act 1980 s 21(1): see *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400 at 408, CA, per Millett LJ; applied in *Halton International Inc v Guernsey Ltd* [2006] EWCA Civ 801, [2006] All ER (D) 302 (Jun); not followed in *James v Williams* [2000] Ch 1, [1999] 3 All ER 309, CA and *Martin v Myers* [2004] EWHC 1947 (Ch), [2004] All ER (D) 396 (Jul). See also *Cattley v Pollard* [2006] EWHC 3130 (Ch), [2007] 2 All ER 1086, [2007] 3 WLR 317. As to the position of a company director see PARA 1149. As to claims by creditors against personal representatives see PARA 1167.

3 As to the meaning of 'fraud' see PARA 1141.

4 'Breach of trust' has never been comprehensively defined. For a discussion of the nature of breach of trust see *Tito v Waddell (No 2)* [1977] Ch 106 at 247-250, [1977] 3 All ER 129 at 246-248; and see also PARAS 1141, 1143.

5 Limitation Act 1980 s 21(1)(a). Section 21(1)(a) applies to claims against express trustees and those who are treated as express trustees, namely persons who, though not expressly appointed as trustees, have assumed the duties of a trustee by a lawful transaction which is independent of and precedes the breach of trust; it does not apply to those cases where the trust obligation arises as a direct consequence of the unlawful transaction impeached by a claimant: *Cattley v Pollard* [2006] EWHC 3130 (Ch), [2007] 2 All ER 1086, [2007] 3 WLR 317.

6 Limitation Act 1980 s 21(1)(b); and see PARA 1142. As to the effect of unconscionable delay ('laches') on a beneficiary's part see PARA 906. A simple duty to account is not a fiduciary duty even when it is owed by a person in a fiduciary position, it is merely a contractual duty whose breach gives rise only to a contractual claim which is subject to s 5 (see PARA 956): *Coulthard v Disco Mix Club Ltd* [1999] 2 All ER 457, [2000] 1 WLR 707, disapproving *Nelson v Rye* [1996] 2 All ER 186, [1996] 1 WLR 1378.

A claim for fraudulent or intentional breach of trust or fiduciary duty is a different cause of action from a claim for breach of trust or fiduciary duty generally and must be separately and distinctly pleaded: see *Berezovsky v Abramovich* [2008] EWHC 1138 (Comm), [2008] All ER (D) 294 (May), applying *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400, 142 Sol Jo LB 243, CA.

7 Limitation Act 1980 s 21(2).

8 Certain provisions formerly in force with respect to claims to recover trust property or property secured by a trust were in terms limited to express trusts: see the Real Property Limitation Act 1833 s 25; the Supreme Court of Judicature Act 1873 s 25(2); and the Real Property Limitation Act 1874 s 10 (all repealed).

9 As to the limitation period for claims by beneficiaries to recover trust property and for breaches of trust see PARA 1143. Subject to the provisions of the Limitation Act 1980 s 21(1), (2) (see the text and notes 1-8), the provisions of that Act apply to equitable interests in land in like manner as they apply to legal estates: see s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and PARA 1019.

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1141. Trustee's fraud or fraudulent breach of trust.

For the purpose of the provision excluding the operation of the limitation period in the case of claims by beneficiaries in respect of fraud or fraudulent breaches of trust to which the trustee was a party or privy¹, it is necessary that the fraud in question amounts to dishonesty². That provision does not in terms refer to claims against trustees and, it seems, will apply to claims against innocent third persons into whose hands trust property has come as the result of the fraud to which the trustee was party or privy³.

Any other claim founded on a trustee's fraud is subject to the general rule that time runs from the time when the fraud has been discovered, or could with reasonable diligence have been discovered⁴.

A trustee is not liable for a fraud committed by his agent if at the time of the fraud the agent was not acting as such⁵; and a trustee (including a personal representative) is not responsible for the default of any agent whom he is authorised to employ, unless he has failed to comply with the duty of care applicable to him⁶ when entering into the arrangements under which the person acts as agent, or when carrying out his duties⁷ to keep those arrangements under review⁸. It seems that some moral complicity in the wrongdoing is required for a trustee to be regarded as being a party or privy to fraudulent activity⁹.

1 le the Limitation Act 1980 s 21(1)(a): see PARA 1140.

2 *Armitage v Nurse* [1998] Ch 241, [1997] 2 All ER 705, CA; and see *DEG-Deutsche Investitions und Entwicklungsgesellschaft mbH v Koshy, Gwembe Valley Development Co Ltd v Koshy (No 3)* [2003] EWCA Civ 1048 at [131], [2004] 1 BCLC 131 at [131], [2003] All ER (D) 465 (Jul). Following this decision, cases decided under previous legislation should be viewed with caution. Cf *Kitchen v Royal Air Forces Association* [1958] 2 All ER 241, [1958] 1 WLR 563, CA (solicitors without dishonest motive concealed a gratuitous payment for the benefit of a trustee client); and *Tito v Waddell (No 2)* [1977] Ch 106 at 245, [1977] 2 All ER 129 at 244. The fraud must be connected with the relevant trust: *UCB Home Loans Corp v Carr* [2000] Lloyd's Rep PN 754, [2000] All ER (D) 605 (disapproved on other grounds in *Biggs v Sotnick's (a firm)* [2002] EWCA Civ 272, [2002] All ER (D) 205 (Jan)). Dishonesty extends to deliberate concealment of a material interest which the defendant knows ought to be disclosed: *Newgate Stud Co v Penfold* [2004] EWHC 2993 (Ch), [2008] 1 BCLC 46, [2004] All ER (D) 372 (Dec).

3 See *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532 at 535-536 (revsd on another point [1958] 3 All ER 540, [1958] 1 WLR 1216, CA). As to the liability under the Limitation Act 1980 s 21(1)(a) of an innocent trustee for the acts of his partner or agent see *Moore v Knight* [1891] 1 Ch 547; *Thorne v Heard and Marsh* [1895] AC 495, HL; and the Trustee Act 2000 s 23.

4 See the Limitation Act 1980 s 32; and PARA 1220 et seq. As to the position where there is uncertainty as to whether the person whose acts are in question is a trustee see *Re Shephard, Shephard v Cartwright* [1953] Ch 728 at 756, [1953] 2 All ER 608 at 619, CA, per Denning LJ (approved sub nom *Shephard v Cartwright* [1955] AC 431 at 450, [1954] 3 All ER 649 at 655, HL). See also *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532 (revsd on another point [1958] 3 All ER 540, [1958] 1 WLR 1216, CA) (claim not against fraudulent trustee but against third persons into whose hands trust property had come; held that, assuming that the six-year period enacted in the equivalent of the Limitation Act 1980 s 21(3) was the relevant period of limitation, the commencement of that period was postponed under s 32); and *Eddis v Chichester Constable* [1969] 2 Ch 345, [1969] 2 All ER 912, CA (life tenant sold picture to consortium of persons whose agent had notice of breach of trust; therefore liable in conversion).

5 *Thorne v Heard and Marsh* [1895] AC 495, HL; *Sims v Brutton* (1850) 5 Exch 802; *Re Fountaine, Re Dowler, Fountaine v Lord Amherst* [1909] 2 Ch 382, CA.

6 le under the Trustee Act 2000 Sch 1 para 3: see **TRUSTS** vol 48 (2007 Reissue) PARA 950.

7 le under the Trustee Act 2000 s 22: see **TRUSTS** vol 48 (2007 Reissue) PARA 995.

8 See the Trustee Act 2000 ss 23(1), 35(1).

9 See *Thorne v Heard and Marsh* [1894] 1 Ch 599 at 608, CA, per Kay LJ (affd [1895] AC 495, HL) (defendant mortgagees were not party or privy to the fraud of the solicitor they employed to sell land, since the solicitor had not acted as their agent or with their approval).

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1142. Property in possession of or converted by trustee.

The provision which deprives a trustee of the protection of the limitation period where he retains trust property in his possession or has received and converted it to his own use¹ has been held to apply where a husband took and retained property given to his wife's separate use²; where a holder of an insurance policy who was a director of an insurance company surrendered his policy but accepted payment in paid-up shares of the company³; and in a case of a claim to recover from a trustee an occupation rent in respect of trust property in which he remained in occupation for his own purposes⁴. Trustees who, being also annuitants, improperly pay themselves the whole of their annuities without any appropriate deduction of income tax are not protected in respect of a claim for the refunding of the income tax⁵. In order that the provision depriving a trustee of protection may apply, it is necessary to show that the trustee has in his possession the trust property or has converted it or its proceeds to his use; it is not sufficient to show merely that he has received it⁶. Where a trustee advances trust money on mortgage to a borrower who uses the money to redeem a previous charge owing to a firm of which the trustee is a partner, the amount paid on redemption is not property received by the trustee and converted to his use⁷.

The requirement of 'possession' of the trust property for the purposes of the limitation provision discussed above⁸ is satisfied where the property or proceeds of sale of trust property are actually in the physical possession of the trustee or could readily be in his physical possession; where the trustee has never in fact recovered the property, 'possession' is not satisfied and the disapplication of the limitation period is thus not applicable⁹.

1 Ie the Limitation Act 1980 s 21(1)(b) (which is subject to s 21(2)); see PARA 1140.

2 *Wassell v Leggatt* [1896] 1 Ch 554.

3 *Re Irish Provident Assurance Co Ltd* [1913] 1 IR 352, CA. See also *Re Clark, Clark v Moore and Moores (Chemists) Ltd* (1920) 150 LT Jo 94 (trustee leased and sold trust property at undervalue to company in which he was the largest shareholder).

4 *Re Howlett, Howlett v Howlett* [1949] Ch 767, [1949] 2 All ER 490. In *James v Williams* [2000] Ch 1, [1999] 3 All ER 309, CA, it was held that an executor de son tort can be a constructive trustee and therefore deprived of the protection of the limitation period; but cf *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400 at 408, CA, per Millett LJ; applied in *Halton International Inc v Guernroy Ltd* [2006] EWCA Civ 801, [2006] All ER (D) 302 (Jun).

5 *Re Sharp, Rickett v Rickett* [1906] 1 Ch 793. See also **INCOME TAXATION** vol 23(1) (Reissue) PARA 520 et seq.

6 *How v Earl Winterton* [1896] 2 Ch 626, CA; *Re Page, Jones v Morgan* [1893] 1 Ch 304; and see *Re Tufnell, Byng v Tufnell* (1902) 18 TLR 705 (trustee had parted with possession of the trust fund to a co-trustee); and *Thorne v Heard and Marsh* [1895] AC 495, HL.

7 *Re Gurney, Mason v Mercer* [1893] 1 Ch 590.

8 Ie the Limitation Act 1980 s 21(1)(b).

9 See *Thorne v Heard and Marsh* [1894] 1 Ch 599.

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1143. General period for claims to recover trust property.

Except in the cases previously stated¹, a beneficiary may not bring a claim² to recover trust property or in respect of any breach of trust³, not being a claim for which a period of limitation is prescribed by any other provision of the Limitation Act 1980⁴, after the expiration of six years from the date on which the right of action accrued⁵, but the right of action of a beneficiary entitled to a future interest in the trust property is not deemed to have accrued until his interest falls into possession⁶.

It has been held that this six-year period applies also to claims brought exclusively on behalf of beneficiaries by trustees who do not have any personal interest in the outcome⁷.

1 See PARAS 1140, 1142.

2 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

3 A breach of trust must be distinguished from breach by a trustee of the rules as to self-dealing and fair dealing; breaches of these rules are not subject to the six-year period laid down by the Limitation Act 1980 s 21(3), but fall to be dealt with on the footing that the trustee was under a disability; a claim by a beneficiary to set aside a purchase by a trustee of the trust property or the beneficiary's interest is subject only to the limitation imposed by the equitable doctrine of laches: see *Tito v Waddell (No 2)* [1977] Ch 106 at 248-250, [1977] 3 All ER 129 at 247-248. As to unconscionable delay ('laches') see PARA 906; and **EQUITY** vol 16(2) (Reissue) PARAS 910-918.

4 Eg limitation periods prescribed under the Limitation Act 1980 s 22 (proceedings claiming personal estate of deceased persons: see PARA 1161 et seq); s 23 (claims for an account). A claim for an account may not be brought after the expiration of any time limit under the Limitation Act 1980 which is applicable to the claim which is the basis of the duty to account: s 23; and see PARA 1008.

5 Limitation Act 1980 s 21(3). However, this provision does not apply to a claim brought by the Attorney General to enforce a charitable trust for the benefit of the public at large, since there is no beneficiary as such: *A-G v Cocke* [1988] Ch 414, [1988] 2 All ER 391 (claim for accounts and the appointment of new trustees allowed to proceed more than 25 years after accrual of the cause of action).

6 Limitation Act 1980 s 21(3); and see *Re Pauling's Settlement Trusts*, *Younghusband v Coutts & Co* [1961] 3 All ER 713 at 735, [1962] 1 WLR 86 at 115 (affd [1964] Ch 303 at 353, [1963] 3 All ER 1 at 20, CA) (invalid advances of capital do not cause future interests to fall into possession). See also PARA 1144. As to charitable trusts see **CHARITIES** vol 8 (2010) PARAS 443-445.

7 *Cattley v Pollard* [2006] EWHC 3130 (Ch), [2007] 2 All ER 1086, [2007] 3 WLR 317.

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1144. Running of time.

For the purpose of the provision as to the limitation period for claims to recover trust property¹, time runs from the date of the breach of trust, and not from the time when the loss occurred to the beneficiary², but time does not begin to run against a beneficiary unless his interest is an interest in possession³. The beneficiary may, however, be barred by acquiescence or unconscionable delay ('laches')⁴.

¹ See the Limitation Act 1980 s 21(1); see PARA 1143.

² *Re Somerset, Somerset v Earl Poulett* [1894] 1 Ch 231, CA; *Want v Campain* (1893) 9 TLR 254; *Thorne v Heard and Marsh* [1895] AC 495, HL; *Collings v Wade* [1896] 1 IR 340, CA.

³ See the Limitation Act 1980 s 21(3); *Collings v Wade* [1896] 1 IR 340, CA; *How v Earl Winterton* [1896] 2 Ch 626, CA; *Re Blow, Governors of St Bartholomew's Hospital v Cambden* [1914] 1 Ch 233 at 246, CA; and PARA 1143. As to the date of accrual of a right of action to recover unregistered land see the Limitation Act 1980 Sch 1; and PARA 1034 et seq.

⁴ *Re Taylor, Atkinson v Lord* (1900) 81 LT 812; and see PARA 906; and **EQUITY** vol 16(2) (Reissue) PARAS 912, 915-917.

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1145. Barred beneficiary not to profit by claim of unbarred beneficiary.

No beneficiary as against whom there would be a good defence under the Limitation Act 1980 is to derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the claim himself and limitation under the 1980 Act had been pleaded in defence¹.

¹ Limitation Act 1980 s 21(4). As to the meaning of the corresponding provision in the Trustee Act 1888 s 8(2) (repealed) see *Collings v Wade* [1896] 1 IR 340, CA; and *Re Somerset, Somerset v Earl Poulett* [1894] 1 Ch 231, CA. See also *Want v Campaign* (1893) 9 TLR 254; *Re Dive, Dive v Roebuck* [1909] 1 Ch 328 at 336; and *Re Fountaine, Re Dowler, Fountaine v Lord Amherst* [1909] 2 Ch 382 at 393, CA. Where the tenant for life is barred but not the remainderman, the interest on funds replaced by the trustee will be paid to the trustee during the life interest: *Re Fountaine, Re Dowler, Fountaine v Lord Amherst*.

As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

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1146. Examples of breaches of trust protected by limitation.

The six-year period of limitation to recover trust property or in respect of breach of trust¹ has been held applicable in a claim against a company director with trustee-like responsibilities in the exercise of powers of management of the property of a claimant².

Under previous corresponding statutory limitation provisions³ the six-year limitation period has been held applicable in:

- 133 (1) a claim against a trustee for a declaration that he was liable to make good a loss from not realising the residuary personal estate⁴;
- 134 (2) a claim against a trustee to make good losses arising from investments negligently made⁵;
- 135 (3) a claim against trustees of a will for an account and payment of a share of personal estate which they had paid away by mistake⁶;
- 136 (4) a claim against executors who held the residuary estate on express trusts to replace funds with which they had improperly parted⁷;
- 137 (5) a claim against trustees for improperly paying annuities in full, without deducting income tax, out of the dividends of securities on which income tax was deducted⁸; and
- 138 (6) a claim against a first mortgagee who sold the mortgaged property under a power of sale, and, without fraud, allowed his solicitor to retain the surplus after payment of the first mortgage, on the solicitors' representation that he had the authority of the second mortgagee to receive it⁹.

1 le the Limitation Act 1980 s 21(3); and see PARA 1143. As to breach of trust see PARA 1143 note 3.

2 See *DEG-Deutsche Investitions und Entwicklungsgesellschaft mbH v Koshy, Gwembe Valley Development Co Ltd v Koshy* [2003] EWCA Civ 1048, [2004] 1 BCLC 131, [2003] All ER (D) 465 (Jul) (where it was held on the facts that the director had been dishonest so that no part of the claim against the defendant for an account of profits for dishonest breach of statutory duty was time-barred: see the Limitation Act 1980 s 21(1); and PARA 1140).

3 le under the Trustee Act 1888 s 8(1)(b) (repealed); the Limitation Act 1939 s 19(2) (repealed).

4 *Re Swain, Swain v Brineman* [1891] 3 Ch 233; and see *Re Page, Jones v Morgan* [1893] 1 Ch 304; and *Collings v Wade* [1896] 1 IR 340, CA.

5 *Re Somerset, Somerset v Earl Poulett* [1894] 1 Ch 231, CA.

6 *Re Timmis, Nixon v Smith* [1902] 1 Ch 176.

7 *Re Oliver, Theobald v Oliver* [1927] 2 Ch 323.

8 *Re Sharp, Rickett v Rickett* [1906] 1 Ch 793. In this case, however, the trustees were held not to be protected in respect of payments made to themselves as annuitants: see PARA 1142.

9 *Thorne v Heard and Marsh* [1895] AC 495, HL.

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1147. Admission of liability by trustee.

In the case of an improper investment by a trustee or any negligent act amounting to a breach of trust¹, the payment of interest by the trustee to the beneficiary is not such an admission of liability as to deprive the trustee of the benefit of the general statutory protection² afforded to trustees³.

1 As to breach of trust see PARA 1143.

2 See the Limitation Act 1980 s 21(3); and PARA 1143.

3 *Re Somerset, Somerset v Earl Poulett* [1894] 1 Ch 231, CA; *Re Fountaine, Re Dowley, Fountaine v Lord Amherst* [1909] 2 Ch 382, CA; *Want v Campain* (1893) 9 TLR 254; and see *Thorne v Heard and Marsh* [1895] AC 495, HL.

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1148. Application of limitation period to beneficiary's equitable remedy.

Where a beneficiary has a direct remedy in equity, independently of the trustee's remedy, against a person who is liable to pay trust money, and the relation between the beneficiary and the debtor is such as merely to give the beneficiary a remedy analogous to some legal remedy, the Limitation Act 1980 applies to the beneficiary's equitable claims, subject to the same rules relating to disabilities and accrual of the right of action as govern a legal right¹. The relation between the beneficiary and the debtor may, however, be such that the debtor is treated as if he were a trustee for the beneficiary², in which case time will not bar the claim against him for property received by him³.

1 See *Burrowes v Gore* (1858) 6 HL Cas 907 at 940 per Lord Chelmsford LC and at 945 per Lord Cranworth; *Stone v Stone* (1869) 5 Ch App 74; and *Williams v Papworth* [1900] AC 563, PC. See also **EQUITY** vol 16(2) (Reissue) PARAS 919-920.

2 See *Bridgman v Gill* (1857) 24 Beav 302; *Soar v Ashwell* [1893] 2 QB 390, CA; and PARA 1149. As to a covenant to pay money on trust see *Spickernell v Hotham* (1854) Kay 669 at 675; *Stone v Stone* (1869) 5 Ch App 74; *Burrowes v Gore* (1858) 6 HL Cas 907; and see PARA 1202.

3 See the Limitation Act 1980 s 21(1)(b) (subject to s 21(2)); and PARA 1140.

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B. TRUST RELATIONSHIP

1149. Constructive trustees.

If money or other property is subject to a trust and a person enters into possession or receives the rent of that property with full notice of the trust, he is a constructive trustee, and the statutory exception from protection¹ applies to him².

Receivers appointed under a court order are trustees of the money which comes into their hands for the parties entitled to it³; and company directors are trustees as respects the company's property in their hands or under their control, but they are not trustees for individual shareholders or for the company's creditors⁴.

1 The exception where trust property or the proceeds of it are in the trustee's possession or previously received by him and converted to his use: see the Limitation Act 1980 s 21(1)(b); and PARA 1142.

2 'Trustee', in the Limitation Act 1980, includes a constructive trustee: see PARA 1140 note 2. See also *Re Dixon, Heynes v Dixon* [1900] 2 Ch 561, CA; *Soar v Ashwell* [1893] 2 QB 390, CA; *Wassell v Leggatt* [1896] 1 Ch 554; *M'Ardle v Gaughran* [1903] 1 IR 106; *Bridgman v Gill* (1857) 24 Beav 302; *Hartford v Power* (1868) 2 IR Eq 204; *Pullan v Koe* [1913] 1 Ch 9; *Re Eyre-Williams, Williams v Williams* [1923] 2 Ch 533; and *Re Blake, Re Minahan's Petition of Right* [1932] 1 Ch 54 at 62. Cf *Kasivisvanathan (C) Chettiar v CVS Chokalingham Chettiar* [1935] AC 163, PC; and *Tintin Exploration Syndicate Ltd v Sandys* (1947) 177 LT 412.

It is, however, necessary to distinguish between two possible uses of the term 'constructive trust'; the first covers those cases where the defendant, though not expressly appointed as trustee, has assumed the duties of a trustee by a lawful transaction which was independent of and preceded the breach of trust and is not impeached by the claimant, while the second covers those cases where the trust obligation arises as a direct consequence of the unlawful transaction which is impeached by the claimant; only the first type falls within the Limitation Act 1980 s 21(1): see *Paragon Finance plc v DB Thakerar & Co (a firm)* [1999] 1 All ER 400 at 408, CA, per Millett LJ; applied in *Halton International Inc v Guernroy Ltd* [2006] EWCA Civ 801, [2006] All ER (D) 302 (Jun); not followed in *James v Williams* [2000] Ch 1, [1999] 3 All ER 309, CA and *Martin v Myers* [2004] EWHC 1947 (Ch), [2004] All ER (D) 396 (Jul). See also *Cattley v Pollard* [2006] EWHC 3130 (Ch), [2007] 2 All ER 1086, [2007] 3 WLR 317.

3 *Seagram v Tuck* (1881) 18 ChD 296. See further **RECEIVERS** vol 39(2) (Reissue) PARA 309.

4 See **COMPANIES** vol 14 (2009) PARA 539. If a company declares a dividend on its shares, the declaration does not make the company a trustee of the dividend for the shareholders and time therefore begins to run immediately under the Limitation Act 1980 s 5 (six years: see PARA 956): see **COMPANIES** vol 15 (2009) PARA 1415. A company secretary is not a trustee: *Municipal Freehold Land Co Ltd v Pollington* (1890) 63 LT 238. As to an auditor's position see **COMPANIES** vol 15 (2009) PARA 919.

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1150. Personal representatives.

For the purpose of the Limitation Act 1980, personal representatives are trustees¹. Nevertheless, it may still be of importance to determine when the period of administration ends and the trusteeship of a will commences², for the commencement of a trusteeship may cut down to six years³ the period of 12 years⁴ which a beneficiary has to claim personal estate under a will or intestacy⁵.

Whether or not a trusteeship has commenced is a question of fact. If a will imposes no duties to be performed by the personal representatives as trustees, the limitation period for trust property will not normally apply⁶; but if trusts arise under a will or intestacy it may be clear, by reason of the lapse of time or otherwise, that the estate has been administered and that the property in question is held by the personal representatives as trustees⁷.

¹ See PARA 1140 note 2.

² See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 569.

³ Ie under the Limitation Act 1980 s 21(3): see PARA 1143.

⁴ Ie under the Limitation Act 1980 s 22: see PARA 1161.

⁵ The alternative view is that the Limitation Act 1980 s 21(3) can never apply when s 22 has any application and that a beneficiary under a will or intestacy always has 12 years to claim personal estate irrespective of the formal establishment of a trust fund at the end of the period of administration.

⁶ *Re Richardson, Pole v Pattenden* [1920] 1 Ch 423, CA; *Re Davis, Evans v Moore* [1891] 3 Ch 119, CA (order in proceedings to pay money to executor of person interested does not make him a trustee of the money); *Re Barker, Buxton v Campbell* [1892] 2 Ch 491 (executors, although holding residue as trustees, not trustees in respect of a legacy payable on an annuitant's death).

⁷ *Re Oliver, Theobald v Oliver* [1927] 2 Ch 323; *Re Swain, Swain v Bringeman* [1891] 3 Ch 233; *Re Page, Jones v Morgan* [1893] 1 Ch 304; *Re Timmis, Nixon v Smith* [1902] 1 Ch 176.

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1151. Liability to account of persons in fiduciary capacity.

Ordinarily a claim for an account is barred after the expiration of any time limit applicable to the claim which is the basis of the duty to account¹. However, where any person as agent² or guardian³, or in any other fiduciary capacity⁴, is in possession of money for which it is his duty to account or has received and converted to his own use such money, then so long as the relation of confidence exists between the parties (and during the continuance of the fiduciary relationship), no lapse of time can bar the right to an account from the beginning of the transactions⁵, nor will time begin to run when the relation is terminated. If a guardian of a minor is in receipt of rents of land during the minority and he retains those rents or converts them to his own use and never accounts for the rents received, a claim for an account may be maintained more than six years after the ward's coming of age⁶. A person who receives rents as bailiff for minors and continues to receive the rents after the minority has determined remains liable to account so long as he receives the rents in the capacity of bailiff⁷.

Where money has been received by a person in the position of a confidential receiver or agent and has been wilfully misapplied for his own benefit, no lapse of time will protect that person or his personal representatives from the liability to account⁸; but the relation of banker and customer is simply that of debtor and creditor⁹. In the absence of special circumstances, the relationship of solicitor and client is not that of trustee and beneficiary¹⁰. If, however, money is handed over by a client to a solicitor or other agent for a particular purpose, for example with a general authority and discretion to invest it for the client's benefit, the money is received on trust and the solicitor or other agent is accountable as a trustee¹¹.

If a trustee who has received rents of property comes into court and asks for an account, mere lapse of time does not deprive him of his right to have his rights and liabilities as an accounting party ascertained¹².

1 See the Limitation Act 1980 s 23; and PARA 1008.

2 See **AGENCY** vol 1 (2008) PARAS 86-88.

3 As to the appointment of a guardian of a minor see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 144 et seq.

4 See eg *DEG-Deutsche Investitions und Entwicklungsgesellschaft mbH v Koshy, Gwembe Valley Development Co Ltd (in receivership) v Koshy (No 3)* [2003] EWCA Civ 1048, [2004] 1 BCLC 131, [2003] All ER (D) 465 (Jul) (managing director acting dishonestly in breach of fiduciary duty). As to the fiduciary relationship between solicitor and client see **LEGAL PROFESSIONS** vol 66 (2009) PARAS 764, 814; **TRUSTS** vol 48 (2007 Reissue) PARA 619. See also the text and notes 10-11.

5 See the Limitation Act 1980 s 21(1)(b); and PARAS 1140, 1142. See also *Tito v Waddell (No 2)* [1977] Ch 106 at 251, [1977] 3 All ER 129 at 249-250; *Mathew v Brise* (1851) 14 Beav 341; *Pelly v Bascombe* (1863) 4 Giff 390 (affd (1865) 5 New Rep 231); *Sturgis v Morse* (1858) 3 De G & J 1; *Pare v Clegg* (1861) 29 Beav 589; and *Wright v Chard* (1859) 4 Drew 673 at 680. As to claims for an account generally see PARAS 1008-1009.

However, upon an agent's breach of duty the principal's remedy is, as a rule, to bring a claim for damages for breach of contract and the period of limitation runs in the agent's favour from the date of the breach: see *Wood v Jones* (1889) 61 LT 551. This is so even where the agent acted in a fiduciary capacity unless he has been guilty of fraud, or unless the claim is for property entrusted to him, or for the proceeds or value of such property: see the Limitation Act 1980 ss 21, 32; and *North American Land and Timber Co Ltd v Watkins* [1904] 1 Ch 242 (affd [1904] 2 Ch 233, CA).

6 *Mathew v Brise* (1851) 14 Beav 341; and see PARA 1180. A person attains full age on attaining 18 years: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 1. If the claim does not come within the exceptions contained in the Limitation Act 1980 s 21(1) (see PARAS 1140-1142), such a claim would be barred at the expiration of six years from the ward's coming of age: *Re Page, Jones v Morgan* [1893] 1 Ch 304; and see *Lockey v Lockey* (1719) Prec Ch 518; *Hovenden v Lord Annesley* (1806) 2 Sch & Lef 607, 632; and *Thomas v Thomas* (1855) 2 K & J 79. See also **AGENCY** vol 1 (2008) PARA 87.

7 See PARA 1180.

8 *Earl of Hardwicke v Vernon* (1808) 14 Ves 504; *Teed v Beere* (1859) 28 LJ Ch 782; and see *Heath v Henly* (1663) 1 Cas in Ch 20. As to the limitation on a principal's claim for mere breach of duty see **AGENCY** vol 1 (2008) PARA 87.

9 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 817; *Bridgman v Gill* (1857) 24 Beav 302; *Re Seaber, ex p Gowers* (1837) 3 Mont & A 172; *Re Tidd, Tidd v Overell* [1893] 3 Ch 154; and *Atkinson v Bradford Third Equitable Benefit Building Society* (1890) 25 QBD 377, CA.

10 *Re Hindmarsh* (1860) 1 Drew & Sm 129; *Watson v Woodman* (1875) LR 20 Eq 721; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 764.

11 See *Dooby v Watson* (1888) 39 ChD 178 at 183. As to the effect of the statute on the liability of persons in a fiduciary capacity to account see *Power v Power* (1884) 13 LR Ir 281; *Soar v Ashwell* [1893] 2 QB 390, CA; *North American Land and Timber Co Ltd v Watkins* [1904] 2 Ch 233, CA; *Burdick v Garrick* (1870) 5 Ch App 233; *Sheldon v Weldman* (1664) 1 Cas in Ch 26; *James v Holmes* (1862) 31 LJ Ch 567; *Gray v Bateman* (1872) 21 WR 137; *Lyell v Kennedy, Kennedy v Lyell* (1889) 14 App Cas 437, HL; *Edwards v Warden* (1876) 1 App Cas 281, HL; *Cheese v Keen* [1908] 1 Ch 245; *Reid Newfoundland Co v Anglo-America Telegraph Co Ltd* [1912] AC 555, PC; and see **LEGAL PROFESSIONS** vol 66 (2009) PARA 764.

12 *Smith v O'Grady* (1870) LR 3 PC 311.

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1152. Mortgagee as trustee.

A mortgagee is not a trustee of his power of sale for the mortgagor¹. If the mortgagee sells the mortgaged property under his power of sale and there is any surplus after his claims have been satisfied, he becomes a trustee of the surplus for unbarred second or subsequent mortgagees of whose claims he has notice and, subject to those claims, for the mortgagor if the mortgagor's title is not barred². If the mortgagee retains the surplus or converts it to his use, the Limitation Act 1980 cannot be set up as a bar to a claim against him³. Where, however, the mortgagor's right to redeem is extinguished, in the case of unregistered land, by the mortgagee's possession for 12 years, the power of sale and the trusts of the surplus are also extinguished, and no claim can be maintained by the mortgagor in respect of a sale made after that extinction⁴.

1 *Warner v Jacob* (1882) 20 ChD 220; *Martinson v Clowes* (1882) 21 ChD 857 at 860; *Nash v Eads* (1880) 25 Sol Jo 95, CA; *Colson v Williams & Co* (1889) 58 LJ Ch 539. A mortgagee is, however, under a duty to the mortgagor to take reasonable care to obtain a proper price: *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949, [1971] 2 All ER 633, CA. A legal mortgage of a ship is a statutory matter: see the Merchant Shipping Act 1995 Sch 1 para 7(1); and **MORTGAGE** vol 77 (2010) PARA 246.

2 See the Law of Property Act 1925 s 105; and *Young v Clarey* [1948] Ch 191, [1948] 1 All ER 197.

3 Limitation Act 1980 s 21(1)(b): see PARAS 1140, 1142. As to mortgages generally see **MORTGAGE** vol 77 (2010) PARA 101 et seq. Unless the mortgagee pays any surplus into court, as he may do under the Trustee Act 1925 s 63 (see **TRUSTS** vol 48 (2007 Reissue) PARA 917 et seq) if for example there are conflicting claims, he may become liable for interest on the retained surplus.

4 See the Limitation Act 1980 s 17; and PARA 1095. Section 17 does not apply in the case of registered land: see the Land Registration Act 2002 s 96(1); and PARA 1029. See also *Chapman v Corpe* (1879) 41 LT 22; *Young v Clarey* [1948] Ch 191, [1948] 1 All ER 197; and PARA 1129.

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C. TRUSTS FOR PAYMENT OF DEBTS

1153. Effect of trusts for payment of debts.

If a debtor during his lifetime conveys property in trust for the benefit of his creditors who are not parties to the conveyance and to whom the fact of its execution is not communicated, the conveyance does not give the creditors a right to enforce the execution of the trusts but operates merely as a power to the trustee to apply the property in satisfying their claims, pointing out the way in which they are to apply the property vested in them for the benefit of the debtor, who alone stands towards them in the relation of beneficiary¹. Where, however, the trusts declared by the deed are to take effect only after the settlor's death, the persons in whose favour the trusts are declared are beneficiaries²; and, when the creditors are parties to the assignment, or it is communicated to them, the relation of trustee and beneficiary is constituted between the assignee in trust and every one of the creditors³. In such a case the trustee has the same protection as any other trustee⁴, with the same exceptions in the case of fraud or property received and converted⁵. If any sum of money is charged upon real or personal property, the creditors have 12 years from the creation of the charge in which to bring their claim to enforce it⁶.

Where an assignment of property is made so as to raise a trust in favour of creditors in general, it has been held that a debt barred at the date of the assignment will not be included, unless there was something in the assignment sufficient to operate as an acknowledgment of the debt to the creditor or a direction to the trustees to include the debt among those to be paid⁷.

If a testator makes provision for the payment of the debts of another person who is dead, the provision would appear to include all debts which are unbarred at the death of the original debtor⁸.

1 *Garrard v Lord Lauderdale* (1830) 3 Sim 1 (affd (1831) 2 Russ & M 451); *Henriques v Bensusan, Bank of England Claim* (1872) 20 WR 350; *Re Sanders' Trusts* (1878) 47 LJ Ch 667; *Johns v James* (1878) 8 ChD 744, CA; and see **TRUSTS** vol 48 (2007 Reissue) PARA 668; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 861.

2 *Re Fitzgerald's Settlement, Fitzgerald v White* (1887) 37 ChD 18, CA; *Synnot v Simpson* (1854) 5 HL Cas 121; *Priestley v Ellis* [1897] 1 Ch 489.

3 *Acton v Woodgate* (1833) 2 My & K 492. See also **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 861.

4 See the Limitation Act 1980 s 21(3); and PARA 1143.

5 See the Limitation Act 1980 s 21(1); and PARAS 1140-1142.

6 See the Limitation Act 1980 s 20(1); and PARA 1105.

7 See *Scott v Jones* (1838) 4 Cl & Fin 382 at 391, HL. As to what is a sufficient acknowledgment see PARAS 1185-1193. As to a trust in a will for payment of debts in general see *Burke v Jones* (1813) 2 Ves & B 275; *O'Connor v Haslam* (1855) 5 HL Cas 170 at 178; and PARA 1154. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 398.

8 *O'Connor v Haslam* (1855) 5 HL Cas 170.

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1154. Trusts of realty and personalty created by will.

If a testator charges any real or personal property with the payment of his debts, or devises land on trust for sale and to pay his debts out of the proceeds of the sale, the creditors are entitled to a 12-year limitation period¹. If he creates a trust affecting his personal property for the payment of his debts, the creditors become beneficiaries under the will and likewise have 12 years from the date of death to recover their debts². If there is a trust of land or a trust affecting the testator's personalty, the creditor's claim will be unlimited in point of time against an executor who is fraudulent or has retained or converted the trust property³.

A direction by a testator to pay a particular debt which is statute-barred may take the debt out of the effect of the limitation period⁴. If a testator expresses a wish that a trust should include statute-barred debts, those debts have been held to be payable out of the residue left after payment of all demands to which the estate is legally liable⁵.

1 See the Limitation Act 1980 s 20(1); and PARA 1105. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 398.

2 See the Limitation Act 1980 s 22; and PARA 1161. The period of administration lasts at least until the debts are paid: see *Harvell v Foster* [1954] 2 QB 367, [1954] 2 All ER 736, CA. In this case, therefore, there is no possibility of the 12-year period under the Limitation Act 1980 s 22 being converted into a six-year period under s 21(3): see PARAS 1143, 1150.

3 See the Limitation Act 1980 ss 21(1), 22; and PARAS 1140-1142, 1161. As to the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARA 1023. As to the general limitation period of six years for claims to recover trust property see PARA 1143.

4 See *Millington v Thompson* (1852) 3 I Ch R 236.

5 See *Scott v Jones* (1838) 4 Cl & Fin 382, HL; cf *Williamson v Naylor* (1838) 3 Y & C Ex 208.

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D. LAND AND ANNUITIES

1155. Limitation as between trustee and beneficiary.

A beneficiary who is in possession of land subject to a trust with the trustees' consent is their tenant at will¹, but, if he is solely and absolutely entitled, his possession may be adverse and time may run in his favour². Where, however, the land is settled land or held on trust, no right of action to recover it is deemed, for limitation purposes, to accrue to other beneficiaries or the tenant for life or statutory owners while a beneficiary not absolutely entitled is in possession³.

The provisions of the Limitation Act 1980 apply to equitable interests in land as they apply to legal estates and thus a right of action to recover the land is treated as accruing to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land⁴. This provision however is expressly made subject to the provision stipulating that no period of limitation is to apply to claims by a beneficiary under a trust, being claims involving fraud of the trustee or property in his possession⁵.

Provision is also made for preserving from extinction the title of tenants for life, statutory owners and trustees so long as the right of action to recover the land of any person beneficially entitled is unbarred, and for enabling statutory owners and trustees to bring claims to recover land on behalf of persons beneficially entitled in possession whose right of action has not been barred, notwithstanding that the right of action of the statutory owner or trustees would otherwise have been barred⁶.

1 *Garrard v Tuck* (1849) 8 CB 231 (on appeal (1850) 19 LJCP 232, Ex Ch). The principle that the beneficiary is to be regarded as a tenant at will applies only if he is in actual occupation; if he is only allowed to receive the rents or otherwise deal with the estate in the hands of occupying tenants, and if the actual occupier is permitted to occupy without paying rent, the trustees may lose their title: *Melling v Leak* (1855) 16 CB 652 at 669; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 198.

2 See *Bridges v Mees* [1957] Ch 475 at 484-486, [1957] 2 All ER 577 at 580-581 (purchaser, who had paid the purchase price and was in possession of land bought, was a person in whose favour a limitation period might run under the Limitation Act 1939 s 10(1) (repealed) (the corresponding provision for the Limitation Act 1980 Sch 1 para 8: see PARA 1078); cf *Re Cussons Ltd* (1904) 73 LJ Ch 296.

3 See the Limitation Act 1980 Sch 1 para 9 (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 18, Sch 4); and PARA 1094. If, however, the land was not settled land or held on trust, possession contrary to the trust by a beneficiary might be adverse, even if the beneficiary were not absolutely entitled: see *Bolling v Hobday* (1882) 31 WR 9.

The Limitation Act 1980 s 15, Sch 1 does not apply to registered land: see the Land Registration Act 2002 s 96(1); and PARA 1029. As to the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARA 1023.

4 Limitation Act 1980 s 18(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4). Thus any relevant provision of the Limitation Act 1980 Sch 1 (paras 1-9) applies in any such case.

5 In the Limitation Act 1980 ss 21(1), (2): see PARAS 1140-1142.

6 See the Limitation Act 1980 s 18(2)-(4); and PARA 1096. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

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1156. Trustee's possession deemed to be beneficiary's possession.

The trustee's possession is in effect deemed to be the beneficiary's possession¹. So long as a trustee receives the rents of an estate, time does not run against the beneficiary, even though the trustee accounts for the rents to a person not entitled².

1 *Hunt v Bateman* (1848) 10 I Eq R 360 at 380 per Pennefather B.

2 *Lister v Pickford* (1865) 34 LJ Ch 582; *Knight v Bowyer* (1858) 2 De G & J 421; *East Stonehouse UDC v Willoughby Bros Ltd* [1902] 2 KB 318.

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1157. Purchaser from trustee, with and without notice.

If a trustee, having the legal estate in fee simple, conveys trust property to a purchaser for value without notice¹ of the trust, the beneficiary has, on general principles, no right in equity against the purchaser, and the beneficiary's right to the land is lost immediately on the conveyance². If, however, trust property is wrongfully conveyed to a purchaser for value with notice of the trust³, the purchaser becomes a constructive trustee of the property and the beneficiary's right to recover the property against the purchaser, or any one claiming under him as a volunteer or with notice, will not be barred by lapse of time so long as the person against whom the claim is made is in possession of the property⁴.

1 As to the position of a purchaser for value without notice see generally **EQUITY** vol 16(2) (Reissue) PARAS 565-567. This situation will occur very rarely given the increasing application of the system of land registration: see generally **LAND REGISTRATION**.

2 The tenant for life or other estate owner under a settlement holds the legal estate in fee simple of the settled land as an express trustee: see the Settled Land Act 1925 s 16. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

3 As to the meaning of 'notice' see generally **EQUITY** vol 16(2) (Reissue) PARA 576 et seq. In general, registration of any instrument or matter under the Land Charges Act 1972 constitutes actual notice: see **EQUITY** vol 16(2) (Reissue) PARA 577; and **LAND CHARGES** vol 26 (2004 Reissue) PARA 616. As to the interests which may be protected by entry of a notice on the register in the case of registered land and the effect of that notice see **EQUITY** vol 16(2) (Reissue) PARA 577; **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 995 et seq.

4 See the Limitation Act 1980 s 21(1); and PARA 1140.

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1158. Annuities.

The fact that an annuity is secured by a trust does not normally affect the period of limitation for the recovery of arrears of the annuity, whether the annuity is charged on real¹ or personal estate². If, however, an annuity is bequeathed by will and is charged on personalty, and at the time when the claim is brought by the annuitant the executors have completed their duties as such and have assumed the character of trustees of the will, it seems that the six-year limitation period prescribed for claims for the recovery of trust property³ will be the period applicable, rather than the 12-year period laid down for claims for the personal estate of a deceased person⁴. Moreover, if the grounds of an annuitant's claim against a trustee⁵ are such that the claim falls within one of the classes of claim in relation to which a trustee may not rely on any period of limitation⁶, the annuitant will be entitled to recover the whole arrears of the annuity⁷.

1 Land charged prior to 1 January 1997 with an annuity is settled land except when it is held on trust: see the Settled Land Act 1925 s 1(1)(v), (7) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 2); and **SETTLEMENTS** vol 42 (Reissue) PARA 678. After 1 January 1997 however strict settlements are to be made or deemed to be made only in certain exceptional circumstances: see the Trusts of Land and Appointment of Trustees Act 1996 s 2(1); and PARA 1022. As to the further restriction on the creation of entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the 1996 Act see generally PARAS 1023, 1101.

2 See the Limitation Act 1980 s 21(3) (general period of limitation prescribed by that section for claims to recover trust property applies only to claims for which no other period of limitation is prescribed); and PARA 1143. As to the limitation periods normally applicable to the recovery of annuities and the date from which time runs see PARA 1107. After a sufficient number of years an annuity may be presumed to have been satisfied: *Shadbolt v Vanderplank* (1861) 29 Beav 405; *Carter v Anderson* (1830) 3 Sim 370; *Smallman v Lord Hamilton* (1760) 2 Atk 71; *Wynn v Williams* (1799) 5 Ves 130; *Pitt v Lord Dacre* (1876) 3 ChD 295.

3 I.e the Limitation Act 1980 s 21(3); see PARA 1143.

4 I.e the Limitation Act 1980 s 22: see PARA 1161. See also PARA 1150. An annuity is a legacy and not interest on a legacy: *Re Ashwell's Will* (1859) John 112.

5 'Trustee' for this purpose includes a constructive trustee and a personal representative performing his duty as such: see PARA 1140 note 2. As to constructive trustees see PARA 1149.

6 See the Limitation Act 1980 s 21(1); and PARAS 1140-1142.

7 See *Re Jordison, Raine v Jordison* [1922] 1 Ch 440, CA.

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1159. Charity land.

Claims by charities to unregistered land or to rent are barred after the expiration of 12 years¹. Charity trustees may acquire a valid title to land by possession under a void lease². If no rent is paid, no tenancy is created and the period of limitation runs from the date on which possession is acquired³. The payment of rent, however small, establishes the relation of landlord and tenant; and where there is a tenancy at will the period of limitation runs from the actual termination of the tenancy, but where there is a tenancy from year to year or other period without a lease in writing, it runs from the end of the first year or other period⁴ or from the last payment of rent⁵.

1 See the Limitation Act 1980 s 15; the Land Registration Act 2002 s 96(1); and PARA 1025 et seq. As to the position when a trespasser or a person who claims independently of the right of the charity comes into possession of charity land see *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324, HL; and **CHARITIES** vol 8 (2010) PARA 445. As to limitation of claims in relation to charities generally see **CHARITIES** vol 8 (2010) PARAS 443-445.

2 See *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324, HL; and **CHARITIES** vol 8 (2010) PARA 444. As to the position where a charity makes a lease of land which is void from the outset see *Magdalen Hospital (President and Governors) v Knotts*; cf *A-G v Davey* (1859) 4 De G & J 136; *A-G v Payne* (1859) 27 Beav 168. See also **ESTOPPEL** vol 16(2) (Reissue) PARA 1032. As to the liability of trustees holding on trust for a charity to account when there has been a fraudulent misappropriation by the trustees see **CHARITIES** vol 8 (2010) PARA 449. As to the right of the beneficiaries as against a purchaser for value under a conveyance see **CHARITIES** vol 8 (2010) PARA 436.

3 *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324, HL.

4 Limitation Act 1980 Sch 1 para 5(1); and see PARA 1058.

5 Limitation Act 1980 Sch 1 para 5(2); and see *Bunting v Sargent* (1879) 13 ChD 330; *Webster v Southey* (1887) 36 ChD 9; and *Magdalen Hospital (President and Governors) v Knotts* (1879) 4 App Cas 324, HL.

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1160. Waste.

A tenant for years, or from year to year, or for any other period, is liable for voluntary waste¹. The obligation not to commit waste is of itself an obligation in tort, and is independent of contract or implied covenant². However, it seems a claim against such a tenant may also be brought upon the basis of an express or implied contract to deliver up in good repair and in that case should therefore be brought within six years of the expiration of his term³. A claim may be brought after the expiration of the term for waste done during the term⁴; and it would appear that it is no defence to say that the wrongful acts were committed more than six years before the tenancy ended⁵.

1 See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 434. 'Waste' consists of any act or omission which causes a lasting alteration to the nature of the land in question to the prejudice of the person who has the remainder or reversion of the land: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 431. As to the nature of waste generally see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 431.

The limitation period and the running of time for a claim for waste committed by a tenant for life depend upon the nature of the claim brought (eg whether a claim for money had and received or for conversion or account) and the nature of the waste in question (eg whether it is voluntary, permissive or equitable): see *Seagram v Knight* (1867) 2 Ch App 628, CA; *Higginbotham v Hawkins* (1872) 7 Ch App 676; *Jay v Jay* [1924] 1 KB 826, DC; *Re Williams, Andrews v Williams* (1884) 52 LT 41 (affd (1885) 54 LT 105, CA); *Jay v Jay* [1924] 1 KB 826, DC; and *Re Williams, Andrews v Williams* (1884) 52 LT 41 (affd (1885) 54 LT 105, CA). As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

2 See **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 431. As to the limitation period and the running of time for claims in tort see PARA 979 et seq.

3 See PARA 956.

4 *Kinlyside v Thornton* (1776) 2 Wm Bl 1111; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 435.

5 *Marsden v Edward Heyes Ltd* [1927] 2 KB 1, CA.

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(ii) Claims in respect of Personal Estates of Deceased Persons

1161. Benefits under will or on intestacy.

Subject to the provisions of the Limitation Act 1980 relating to time limits for claims in respect of trust property discussed above¹, no claim² to the personal estate³ of a deceased person or to any share or interest in such an estate, whether under a will or on intestacy, can be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued⁴, and no claim to recover arrears of interest in respect of any legacy, or damages in respect of those arrears, may be brought after the expiration of six years from the date when the interest became due⁵.

The limitation applies to all claims to recover legacies, whether charged on land or not⁶, including annuities if charged on personalty only⁷, at least so long as administration has not been completed⁸.

The limitation applies not only to a claim by a beneficiary against a personal representative but, in a case where the personal representative has distributed the estate of the testator or intestate, to a claim by a beneficiary against a person who has been wrongly paid or overpaid⁹.

A claim brought by a residuary legatee against a personal representative for administration of the testator's estate is a claim to recover a legacy, even though it is not alleged that the representative had in his hands, at the date of the bringing of the proceeding, assets out of which to pay the legacy¹⁰. A personal representative who has distributed, is, therefore, protected after 12 years¹¹, but will be liable to proceedings, subject only to questions of unconscionable delay ('laches') or acquiescence¹², for so long as he retains assets in his hands.

1 le the Limitation Act 1980 s 21(1), (2): see PARA 1140.

2 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

3 'Personal estate' does not include chattels real: Limitation Act 1980 s 38(1).

4 Limitation Act 1980 s 22(a). Time runs from when the administrator has paid the costs, funeral and testamentary and administration expenses, debts and other liabilities properly payable out of the assets in his hands and provided for the payment of any pecuniary legacies: *Re Loftus, Green v Gaul* [2006] EWCA Civ 1124, [2006] 4 All ER 1110, [2007] 1 WLR 591.

5 Limitation Act 1980 s 22(b).

6 *Sheppard v Duke* (1839) 9 Sim 567; *Hamilton v Martin* (1911) 45 ILT 140.

7 See PARA 1158 note 4.

8 See PARA 1158. As to the limitation period applicable to claims against an executor de son tort see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 59.

9 *Re Diplock, Diplock v Wintle* [1948] Ch 465, [1948] 2 All ER 318, CA (affd sub nom *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL); and see **EQUITY** vol 16(2) (Reissue) PARA 865.

10 See *Re Richardson, Pole v Pattenden* [1920] 1 Ch 423, CA.

11 The period of 12 years may be extended by the running of time postponed in the case of disability, acknowledgment, part payment, fraud or mistake: see the Limitation Act 1980 s 1(2); and PARA 1168 et seq. As to the acknowledgment of claims to the personal estate of a deceased person see in particular ss 29(5), 31(8); and PARAS 1184, 1216.

12 As to the right to refuse relief on the grounds of laches or acquiescence see PARA 906.

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1162. Running of time in case of legacies.

In claims to personal estate of a deceased person time begins to run from the date on which the right to receive the share or interest accrued¹. In the case of an immediate legacy this is the date of death and not the expiration of one year after the death². If the legacy is payable on the happening of some future event, time does not run against the legatee until the event happens³.

Until there are assets applicable in due course of administration for the payment of a pecuniary legacy, it appears the legatee cannot be said to have a present right to receive it⁴. If more than 12 years after the testator's death, a legatee claims payment on the death of an annuitant under the will, then even if the annuity had priority over the legacy the legatee will be barred unless he proves that there were no other assets available for the payment of the legacy until less than 12 years before the claim⁵; if the annuity did not have priority, the legatee will be barred because he had a right to have the annuity abated in his favour⁶.

¹ See the Limitation Act 1980 s 22(a); and PARA 1161.

² *Waddell v Harshaw* [1905] 1 IR 416, CA, disapproving dictum of Romilly MR in *Earle v Bellingham (No 2)* (1857) 24 Beav 448 at 450, and holding, in accordance with *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 QBD 1, CA, that a present right to receive payment is not equivalent to a present right to enforce payment.

³ *Prior v Horniblow* (1836) 2 Y & C Ex 200; *Rudd v Rudd* [1895] 1 IR 15, CA. If a gift to a legatee is only absolute if he dies without issue, time does not run against him during his life: *Lord v Lord* (1857) 3 Jur NS 485. As to annuities bequeathed by will see PARAS 1107, 1158.

⁴ *Faulkner v Daniel* (1843) 3 Hare 199 at 212; *Ravenscroft v Frisby* (1844) 1 Coll 16; and see *Proud v Proud* (1862) 11 WR 101 where it was held that the fact that property upon which a legacy is charged is subject to prior charges does not necessarily prevent the right to receive the legacy accruing.

⁵ *Bright v Larcher* (1859) 27 Beav 130 (on appeal 4 De G & J 608).

⁶ *Rogers v Millicent* (1780) 2 Dick 570; *Wroughton v Colquhoun* (1847) 1 De G & Sm 357; *Carr v Ingleby* (1831) 1 De G & Sm 362; *Long v Hughes* (1831) 1 De G & Sm 364; *Ashburnham v Ashburnham* (1848) 16 Sim 186; and see *Wright v Callender* (1852) 2 De GM & G 652; *Todd v Bielby* (1859) 27 Beav 353; *Potts v Smith* (1869) LR 8 Eq 683; *Carmichael v Gee* (1880) 5 App Cas 588, HL; and *Re Cottrell, Buckland v Bedingfield* [1910] 1 Ch 402.

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1163. Reversionary legacies.

Where a legacy is demonstrative and directed to be paid out of a reversionary fund and the legatee has no right to require a sale of the fund while it is reversionary, time does not begin to run until the reversion falls in¹. If, however, the legatee can require the sale of the fund before it falls into possession, time runs against him from the date when he could enforce the sale and the satisfaction of the legacy out of the proceeds². Where the legacy is given generally and the only assets applicable for payment of the legacy are reversionary or contingent funds, time will not to begin to run against the legatee until the funds fall in³.

1 *Earle v Bellingham (No 2)* (1857) 24 Beav 448; *Re Seager's Estate, Seager v Aston* (1857) 26 LJ Ch 809; *Ludlam, Ludlam v Ludlam* (1890) 63 LT 330; and see *Adams v Barry* (1845) 2 Coll 285 at 290. Time runs from the later of the end of the executor's year and the date when the relevant interest fell into possession: *Re Loftus, Green v Gaul* [2005] EWHC 406 (Ch), [2005] 2 All ER 700, [2005] 1 WLR 1890; revsd in part [2006] EWCA Civ 1124, [2006] 4 All ER 1110, [2007] 1 WLR 591.

2 *Re Owen* [1894] 3 Ch 220.

3 *Re Blachford, Blachford v Worsley* (1884) 27 ChD 676; *Re Johnson, Sly v Blake* (1885) 29 ChD 964.

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1164. Residue.

When the residuary legatee is capable of ascertaining what is the clear residue and requiring payment of the amount, time normally begins to run against him at the end of one year from the testator's death¹. A residuary legatee may, however, have a right to require payment to him of part of the assets at one time and part at another; for example, if a sum has been set apart to satisfy an annuity, he has no right to the sum until the annuity ceases, and, so long as the annuity lasts, time will not run against the right to obtain payment of a sum so set aside². The mere existence of an annuity for a long period does not keep alive the right of a residuary legatee to a general account and administration of the testator's assets, as distinguished from the right to recover particular assets; as against the general right to administration, time runs from the end of the year after the testator's death³. Time does not run against the right of a residuary legatee to recover particular assets which have actually come into the representative's hands until the assets have so come, and a residuary legatee has at any time a right to an inquiry whether any assets of the testator have come into the representative's hands within 12 years of the bringing of the claim⁴.

1 *Prior v Horniblow* (1836) 2 Y & C Ex 200.

2 See *Bright v Larcher* (1859) 27 Beav 130 (on appeal 4 De G & J 608). The observation of Romilly MR (27 Beav 130 at 135) that 'in every case where a fund is set apart to satisfy an annuity, there is a trust of the fund set apart in favour of the residuary legatee' is, it is submitted, inaccurate.

3 See *Re Johnson, Sly v Blake* (1885) 29 ChD 964; *Re Ludlam, Ludlam v Ludlam* (1890) 63 LT 330. As to the parties to proceedings for administration see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 717.

4 *Adams v Barry* (1845) 2 Coll 285; *Binns v Nichols* (1866) LR 2 Eq 256; *Reed v Fenn* (1866) 35 LJ Ch 464; *Re Johnson, Sly v Blake* (1885) 29 ChD 964; *Re Ludlam, Ludlam v Ludlam* (1890) 63 LT 330.

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1165. Legatee also personal representative.

Where the person entitled to receive the legacy is also the personal representative who is liable to pay it, the limitation provisions¹ do not apply so long as the two characters are united². It is submitted that if, after time has begun to run, the same union takes place, the limitation provisions cease to have any operation, as the legacy is in the hands entitled to receive it.

¹ I.e. the Limitation Act 1980 s 22: see PARA 1161.

² *Binns v Nichols* (1866) LR 2 Eq 256; *Re Blachford, Blachford v Worsley* (1884) 27 ChD 676 (payment postponed pending falling in of reversionary interest; legatees held entitled to interest from one year after the death); *Re Pardoe, McLaughlin v Penny* [1906] 1 Ch 265.

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1166. Intestacy.

Where a claim is made against the personal representative of an intestate for recovery of a share of the estate¹, time does not begin to run against any person who may take under the intestacy unless and until his interest is an interest in possession².

1 As to these claims see the Limitation Act 1980 s 22; and PARA 1161.

2 See the Limitation Act 1980 s 22. Generally speaking, time will not begin to run until the end of the year after the intestate's death, as the personal representative is not bound to distribute the estate before the expiration of one year from the death: Administration of Estates Act 1925 s 44.

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1167. Claims by creditors.

The limitation provisions relating to claims in respect of trust property relate only to claims by beneficiaries¹ and they are therefore inapplicable to proceedings by a creditor². The limitation period for a claim by a creditor against a personal representative who has improperly parted with assets is therefore six years, whether it takes the form of a claim founded on a devastavit³ or a claim for an account⁴. In the case of devastavit the period runs from the date on which the act was committed⁵. Where the claim is against the personal representatives as such in respect of a debt due from the testator at his death, the normal limitation periods, reckoned from the date when the cause of action accrued, apply; namely six years in the case of a simple contract debt⁶, and 12 years in the case of a specialty debt⁷ or a claim to recover money secured by a mortgage or charge⁸. If, however, the will creates a charge on the assets for the payment of debts, a simple contract creditor will be entitled to the appropriate limitation period of 12 years⁹. An order for general administration of the estate of a testator or intestate in a creditor's claim stops further time running in respect of debts not already barred as the creditor may no longer sue without the court's leave¹⁰.

1 See the Limitation Act 1980 s 21; and PARA 1140 et seq.

2 See *Re Blow, Governors of St Bartholomew's Hospital v Cambden* [1914] 1 Ch 233 at 246, CA (creditor not a 'beneficiary' within the meaning of the Trustee Act 1888 s 8(1)(b) (repealed), even though that subsection in so far as it was not expressly restricted to claims by beneficiaries applied to claims by creditors). In s 1(3) (repealed), 'trustee' included an executor and administrator, as in the corresponding definition in the Limitation Act 1980 s 38(1) (see PARA 1140 note 2).

3 See PARA 952. See *Charlton v Low* (1734) 3 P Wms 328 at 331; *Thorne v Kerr* (1855) 2 K & J 54; *Re Gale, Blake v Gale* (1883) 22 ChD 820; *Lacons v Warmoll* [1907] 2 KB 350, CA; *Re Croydon* (1908) 125 LT Jo 282; *Re Blow, Governors of St Bartholomew's Hospital v Cambden* [1914] 1 Ch 233 at 240, 243, CA; and *Re Lewis, Jennings v Hemsley* [1939] Ch 232, [1939] 3 All ER 269. As to devastavit generally see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 792-798.

4 See the Limitation Act 1980 ss 2, 5, 23; and see PARA 1008.

5 *Thorne v Kerr* (1855) 2 K & J 54; *Re Gale, Blake v Gale* (1883) 22 ChD 820; *Lacons v Warmoll* [1907] 2 KB 350, CA; *Re Blow, Governors of St Bartholomew's Hospital v Cambden* [1914] 1 Ch 233 at 243, CA.

6 See the Limitation Act 1980 s 5; and PARAS 952, 956. See eg *Boatwright v Boatwright* (1873) LR 17 Eq 71.

7 See the Limitation Act 1980 s 8; and PARA 975.

8 See the Limitation Act 1980 s 20; and PARA 1105. As to the effect of a debtor's death on the running of time see further **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 396. As to a personal representative's power to pay a statute-barred debt and the effect of acknowledgment or part payment see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 392-395.

9 See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 397.

10 See **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 737.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(1) IN GENERAL/1168. The saving provisions for disability etc.

3. EXTENDED OR POSTPONED LIMITATION PERIODS

(1) IN GENERAL

1168. The saving provisions for disability etc.

All the limitation periods prescribed by the Limitation Act 1980 for different classes of claim¹ are subject² to provisions for their extension in case of disability³ and for their postponement where there has been acknowledgment⁴ or part payment⁵ appropriate to the right of action, or in cases of fraud⁶, deliberate concealment by the defendant of any fact relevant to the claimant's right of action⁷ or mistake⁸.

Throughout the provisions for extension or postponement in the Limitation Act 1980⁹ reference is made to a right of action and in this context these references include the following:

- 139 (1) a cause of action;
- 140 (2) a right to receive money secured by a mortgage or charge on any property;
- 141 (3) a right to recover proceeds of the sale of land; and
- 142 (4) a right to receive a share or interest in the personal estate of a deceased person¹⁰.

References to the date of accrual of a right of action refer, in the case of a claim on a judgment, to the date on which the judgment became enforceable¹¹, and in the case of a claim to recover arrears of rent or interest, or damages in respect of arrears of rent or interest, to the date on which the rent or interest became due¹².

1. I.e. the limitation periods prescribed by the Limitation Act 1980 Pt I (ss 1-27B), discussed previously in this title. Limitation periods prescribed by other statutes are not subject to the saving provisions: see s 39; and PARA 918. As regards claims barred before the commencement of the Limitation Act 1980 see PARA 902.

2. See the Limitation Act 1980 s 1(2). The provisions for extension or exclusion are contained in Pt II (ss 28-33). As to discretionary extension of the time limit in cases of libel and slander see s 32A; and PARA 996. As to extension of the time limit for claims in respect of personal injuries or death see s 33; and PARAS 1001-1002.

3. See the Limitation Act 1980 ss 28, s 28A; and PARA 1170 et seq.

4. See the Limitation Act 1980 ss 29-31; and PARA 1181 et seq.

5. See the Limitation Act 1980 ss 29-31; and PARA 1194 et seq.

6. See the Limitation Act 1980 s 32(1)(a); and PARA 1220 et seq.

7. See the Limitation Act 1980 s 32(1)(b); and PARA 1220 et seq.

8. See the Limitation Act 1980 s 32(1)(c); and PARA 1220 et seq.

Historically the provisions of the Limitation Act 1980 Pt II derive both from those of previous legislation (see eg the Real Property Limitation Act 1833 s 14 (acknowledgment of title); s 26 (concealed fraud); and the Real Property Limitation Act 1874 s 3 (infancy etc); s 5 (30 years' maximum); s 7 (acknowledgments) (both Acts repealed)) and from previous case law (eg the Limitation Act 1980 s 32 embodies much of the former doctrine of equity concerning the effect of fraud). However, the present legislation differs from older legislation not only in detail but also in that the extension or postponement provisions are generally applicable: see s 1(2).

Decisions reached on the effect of former legislation may often be inapplicable to present legislation and law which was built on judicial decisions may have been overridden or largely superseded by provisions of the Limitation Act 1980 (eg the effective reproduction of the former equitable doctrine concerning the effect of fraud or fraudulent concealment within s 32: see *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532 at 536 per Danckwerts J). Moreover, the scope of protection for disabilities has narrowed as categories of 'disability' have themselves been removed by law: the only two disabilities for limitation purposes are now minority and mental incapacity: see PARA 1170.

9 le the Limitation Act 1980 Pt II (ss 28-33).

10 Limitation Act 1980 s 38(9). As to the meaning of 'claim' apart from in this special context see PARA 915. As to the construction of references to a right of action to recover land see s 38(7); and PARA 1016.

11 Limitation Act 1980 s 38(10)(a).

12 Limitation Act 1980 s 38(10)(b).

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1169. Suspension of limitation period in war.

The existence of a state of war does not of itself suspend the running of time for limitation purposes¹. If, however, while a limitation period is running any necessary party to a claim is an enemy or detained in enemy territory, the running of time is suspended while he is an enemy or is so detained² and the limitation period is continued until one year has expired after he ceased to be an enemy or so detained³.

No one may apply under the provisions of the Land Registration Act 2002 relating to adverse possessors⁴ to be registered⁵ as the proprietor of an estate in land⁶ during, or before the end of 12 months after the end of, any period in which the existing registered proprietor is, for the purposes of the Limitation (Enemies and War Prisoners) Act 1945⁷, either an enemy or detained in enemy territory⁸.

1 See PARA 925.

2 See the Limitation (Enemies and War Prisoners) Act 1945 s 1(1); and PARAS 1232-1234. As to the meaning of 'enemy' and 'enemy territory' see PARA 1232 notes 4, 6.

3 See the Limitation (Enemies and War Prisoners) Act 1945 s 1(1); and PARA 1232.

4 Ie under the Land Registration Act 2002 Sch 6: see PARA 1029 et seq; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

5 As to the meaning of 'registered' see PARA 1030 note 2.

6 As to the meaning of 'land' see PARA 1018.

7 As to the Limitation (Enemies and War Prisoners) Act 1945 see PARAS 1232-1234.

8 Land Registration Act 2002 Sch 6 para 8(1).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1170. Meaning of 'disability'.

(2) DISABILITY

1170. Meaning of 'disability'.

For the purposes of the Limitation Act 1980, a person is deemed to be under a disability while he is a minor¹ or lacks capacity (within the meaning of the Mental Capacity Act 2005)² to conduct legal proceedings³. This definition is exhaustive and cannot be expanded to include, for example, a person's poverty, ignorance, illiteracy and isolation⁴.

1 The age of majority is 18 years: Family Law Reform Act 1969 s 1. The term 'infant' is the term in fact used in the Limitation Act 1980, but the term 'minor', which has the same meaning, is used in other legislation and is now to be preferred. See generally **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 1.

2 As to the principles which apply for determining whether or not a person lacks capacity for the purposes of the Mental Capacity Act 2005 see ss 1-3; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641. Any question whether a person lacks capacity within the meaning of the 2005 Act must be decided on the balance of probabilities: s 2(4). A person must be assumed to have capacity unless it is established that he lacks capacity: s 1(2); and see eg *Morley v Hunt & Co (a firm)* [2005] All ER (D) 41 (Jan) (claimant had shown himself able to instruct solicitors and to consider the question of professional negligence by their predecessors; the fact that he might display a lack of wisdom and some gullibility did not of itself demonstrate an inability to manage his own affairs) (decided under the Limitation Act 1980 s 38(2) prior to the amendment set out in note 3).

3 Limitation Act 1980 s 38(2) (amended by the Mental Capacity Act 2005 Sch 6 para 25(a)); and see note 1.

4 See *Chagos Islanders v A-G* [2003] EWHC 2222 (QB), (2003) Times, 10 October, [2003] All ER (D) 166 (Oct); affd [2004] EWCA Civ 997, (2004) Times, 21 September, [2004] All ER (D) 85 (Aug).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1171. Effect of disability.

1171. Effect of disability.

If on the date when any right of action accrued¹ for which a period of limitation is prescribed by the Limitation Act 1980² the person to whom it accrued was under a disability³, the claim may be brought at any time before the expiration of the limitation period ordinarily appropriate to that claim⁴ but calculated as starting from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the normal period of limitation has expired⁵. This provision does not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims⁶. When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time is allowed by reason of the disability of the second person⁷.

A party, or an intended party, who lacks capacity⁸ to conduct proceedings (a 'protected party')⁹ must have a litigation friend¹⁰ to conduct proceedings on his behalf¹¹; and a child¹² must have a litigation friend to conduct proceedings on his behalf unless the court makes an order¹³ permitting him to conduct proceedings without a litigation friend¹⁴.

No one may apply under the provisions of the Land Registration Act 2002 relating to adverse possessors¹⁵ to be registered¹⁶ as the proprietor of an estate in land¹⁷ during any period in which the existing registered proprietor is either unable because of mental disability¹⁸ to make decisions about issues of the kind to which such an application would give rise¹⁹ or unable to communicate such decisions because of mental disability or physical impairment²⁰.

1 A disability coming into existence after the date when a right of action accrued to a person who was not then under a disability will not prevent time continuing to run against him: see *Purnell v Roche* [1927] 2 Ch 142 at 149; *Murray v Watkins* (1890) 62 LT 796; *Garner v Wingrove* [1905] 2 Ch 233; *Owen v De Beauvoir* (1847) 16 M & W 547 at 567 (affd sub nom *De Beauvoir v Owen* (1850) 5 Exch 166 at 182).

Note, however, that the Limitation Act 1980 s 33(3)(d) includes among the factors to which the court must have regard when deciding whether or not to exclude the limitation period for claims in respect of personal injuries or death, the duration of any disability of the claimant arising after the date of the accrual of the cause of action: see PARAS 1001-1002.

2 As to the construction of references to the date of the accrual of a right of action see PARA 1168.

3 As to the meaning of 'disability' see PARA 1170.

4 The six years in a claim for breach of contract (see PARA 956), in tort (see PARA 979) or for breach of commonhold duty (see PARA 1015); three years in personal injury claims or claims under the Fatal Accidents Act 1976 (see PARAS 998, 1000, 1176); one year in claims for libel, slander or malicious falsehood (see PARAS 996, 1175); three years in claims in respect of defective products (see PARAS 1003-1004, 1174); and two years in cases of contribution between joint tortfeasors (see PARAS 1006, 1177). However, this provision is subject to the overriding time limits contained in the Limitation Act 1980 s 14B (overriding time limit of 15 years for negligence claims not involving personal injuries (latent damage): see PARAS 982, 1173); s 11A(3) (ten-year longstop in cases of defective products: see PARAS 1003, 1174); and, in respect of claims to recover unregistered land or money charged on land, s 28(4) (see PARA 1172).

5 See the Limitation Act 1980 s 28(1), which provides for a period of six years starting from the date when the person ceased to be under a disability or died; this six-year period is modified by s 28(4A) (one year) (see PARA 1175); s 28(5) (two years) (see PARA 1177); s 28(6) (three years) (see PARA 1176); and s 28(7) (three years, but subject to the ten-year longstop) (see PARAS 1003-1004, 1174). As to the position in negligence claims where the facts relevant to the cause of action are not known at the date of accrual, namely latent damage claims, see PARA 1173.

Notwithstanding the imposition of this open-ended limitation period, applications have been made to strike out a claim for delay on the grounds of its being an abuse of process. It has been held that, where the claimant was under a continuous disability, a delay of 28 years between the alleged act of negligence and the date of the writ did not justify striking out the claim under the inherent jurisdiction of the court as an abuse of process: *Headford v Bristol and District Health Authority* (1994) 24 BMLR 20, CA. Similarly, a claim was not struck out where there was a delay of almost two years in applying for leave to appeal against an order in personal injury proceedings where the claimant was under a disability: *Turner v WH Malcolm Ltd and McNulty* (1992) 15 BMLR 40, CA. However, in *Hogg v Hamilton and Northumberland Health Authority* [1993] 4 Med LR 369, [1992] PIQR P387, CA, where the claimant was under a permanent disability and a writ had been issued and not proceeded with, a second writ issued a considerable time later was held to be an abuse of process and the claim was struck out. Under the Civil Procedure Rules ('the CPR'), proceedings are no longer commenced by writ as in the cases cited in this note, but by the issue of a claim form: see PARA 929.

6 Limitation Act 1980 s 28(2). As to the circumstances in which a person is deemed to claim through another person see PARA 1025 text and notes 9-10.

7 Limitation Act 1980 s 28(3).

8 le within the meaning of the Mental Capacity Act 2005: see PARA 1170 note 2; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

9 See CPR 21.1(2).

10 As to the appointment of a litigation friend see CPR 21.4-CPR 21.6; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 1414-1415.

11 CPR 21.2(1).

12 For these purposes, 'child' means a person under 18: CPR 21.1(2).

13 le under CPR 21.2(3): see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 1411.

¹⁴ See CPR 21.2(2), (3); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 1411.

15 le under the Land Registration Act 2002 Sch 6: see PARA 1029 et seq; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

16 As to the meaning of 'registered' see PARA 1030 note 2.

17 As to the meaning of 'land' see PARA 1018.

18 For these purposes, 'mental disability' means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning: Land Registration Act 2002 Sch 6 para 8(3).

19 Land Registration Act 2002 Sch 6 para 8(2)(a).

20 Land Registration Act 2002 Sch 6 para 8(2)(b).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1172. Claim to recover unregistered land or money charged on land.

1172. Claim to recover unregistered land or money charged on land.

No claim¹ to recover unregistered land² or money charged on land may be brought by virtue of the provisions as to disability³ by any person after the expiration of 30 years from the date on which the right of action⁴ accrued to that person or some person through whom he claims⁵.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 As to the meaning of 'land' see PARA 1018.

3 I.e. the Limitation Act 1980 s 28(1); see PARA 1171.

4 As to the construction of references to a right of action to recover land see the Limitation Act 1980 s 38(7), (8); and PARAS 1016, 1168.

5 Limitation Act 1980 s 28(4). As to the limitation periods for claims to recover unregistered land see PARA 1016 et seq; and as to their disapplication, and hence the disapplication of s 28(1), (4), in the case of registered land see PARA 1029. As to the limitation period for claims to recover money charged on land see PARA 1105 et seq. As to the circumstances in which one person is deemed to claim through another see PARA 1025.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1173. Claim in negligence where damage not discoverable within limitation period; latent damage.

1173. Claim in negligence where damage not discoverable within limitation period; latent damage.

If, in the case of any negligence claim in respect of latent damage for which a period of limitation is prescribed by the Limitation Act 1980¹:

- 143 (1) the period so applicable is the special time limit of three years²;
- 144 (2) on the date which is the 'starting date' for reckoning that period³, the person by reference to whose knowledge that date fell to be determined was under a disability; and
- 145 (3) the provisions excluding the limitation period in case of disability⁴ do not apply,

the claim may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died, whichever first occurred, notwithstanding that the period mentioned above has expired⁵. No such claim may, however, be brought after the expiration of 15 years from the date of the act or omission which is alleged to constitute negligence and to which the damage in respect of which damages are claimed is alleged to be attributable⁶ (the overriding time limit set for negligence claims not involving personal injuries)⁷.

- 1 le any claim for which a limitation period is set by the Limitation Act 1980 s 14A: see PARA 982.
- 2 le the time limit set by the Limitation Act 1980 s 14A(4)(b): see PARA 982.
- 3 As to the 'starting date' see the Limitation Act 1980 s 14A(5); and PARA 982.
- 4 le the Limitation Act 1980 s 28: see PARA 1171.
- 5 Limitation Act 1980 s 28A(1) (s 28A added by the Latent Damage Act 1986 s 2(1)).
- 6 le the end of the period of limitation prescribed by the Limitation Act 1980 s 14B: see PARA 982.
- 7 Limitation Act 1980 s 28A(2) (as added: see note 5).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1174. Claims in respect of defective products.

1174. Claims in respect of defective products.

If, on the date when any right of action accrued in a claim¹ in respect of a defective product², the person to whom it accrued was under a disability³, the claim may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation applicable to such cases has expired⁴. An important exception to this rule, however, is provided by the Limitation Act 1980: no such claim may be brought after the expiration of ten years from the relevant time⁵, notwithstanding that the claimant was under a disability at that time⁶.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 Ie a claim under the Limitation Act 1980 s 11A (see PARAS 1003-1004) or a claim under the Consumer Protection Act 1987 s 6(1)(a) (death caused by defective product).

3 As to the meaning of 'disability' see PARA 1170.

4 Limitation Act 1980 s 28(1), (7)(b) (s 28(7b) added by the Consumer Protection Act 1987 Sch 1 para 4).

5 As to the meaning of 'relevant time' for these purposes see PARA 1003 note 3.

6 Limitation Act 1980 s 11A(3) (added by the Consumer Protection Act 1987 Sch 1 para 1); Limitation Act 1980 s 28(7)(a) (added by the Consumer Protection Act 1987 Sch 1 para 4). See also PARAS 1003-1004.

UPDATE

1174 Claims in respect of defective products

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1175. Claims for libel, slander or malicious falsehood.

1175. Claims for libel, slander or malicious falsehood.

If, in a claim for defamation or malicious falsehood where the limitation period is one year from the date on which the cause of action accrued¹, the claimant is under a disability² on the date when the cause of action accrued, a claim may be brought at any time before the expiration of one year from the date when the claimant ceased to be under a disability³.

1 See the Limitation Act 1980 s 4A; and PARA 996.

2 As to the meaning of 'disability' see PARA 1170.

3 Limitation Act 1980 s 28(4A) (added by the Administration of Justice Act 1985 s 57(3); substituted by the Defamation Act 1996 s 5(1), (3), (6)).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1176. Three-year period for personal injury claims.

1176. Three-year period for personal injury claims.

If a claim is one to which the three-year limitation period for personal injury claims¹ or the similar limitation period for claims under the Fatal Accidents Act 1976² applies, and on the date when the right of action accrued the person to whom it accrued was under a disability³, the claim may be brought at any time before the expiration of three years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired⁴.

1 See PARA 998.

2 See PARA 1000.

3 As to the meaning of 'disability' see PARA 1170.

4 Limitation Act 1980 s 28(1), (6). See also *Tolley v Morris* [1979] 1 All ER 71, [1979] 1 WLR 205, CA (affd [1979] 2 All ER 561, [1979] 1 WLR 592, HL), where the court refused to dismiss a personal injury claim on behalf of a girl aged 16 for want of prosecution as she would in any case have had a right to bring a claim herself within three years of attaining 18.

Notwithstanding the imposition of this open-ended limitation period, applications have been made to strike out a claim for delay on the grounds of its being an abuse of process. It has been held that, where the claimant was under a continuous disability, a delay of 28 years between the alleged act of negligence and the date of the writ did not justify striking out the claim under the inherent jurisdiction of the court as an abuse of process: *Headford v Bristol and District Health Authority* (1994) 24 BMLR 20, CA. Similarly, a claim was not struck out where there was a delay of almost two years in applying for leave to appeal against an order in personal injury proceedings where the claimant was under a disability: *Turner v WH Malcolm Ltd and McNulty* (1992) 15 BMLR 40, CA; and see *Bull v Devon Area Health Authority* [1993] 4 Med LR 117, 22 BMLR 79, CA. However, in *Hogg v Hamilton and Northumberland Health Authority* [1993] 4 Med LR 369, [1992] PIQR P387, CA, where the claimant was under a permanent disability and a writ had been issued and not proceeded with, a second writ issued a considerable time later was held to be an abuse of process and the claim was struck out. Under the Civil Procedure Rules (the 'CPR'), proceedings are no longer commenced by writ, but by the issue of a claim form: see PARA 929.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1177. Two-year period for recovery of contribution.

1177. Two-year period for recovery of contribution.

In claims for contribution between tortfeasors¹, where the person claiming was under a disability² as at the date when any right of action accrued under the Limitation Act 1980, the claim may be brought at any time before the expiration of two years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired³.

1 As to such contribution claims generally see PARA 1006.

2 As to the meaning of 'disability' see PARA 1170.

3 Limitation Act 1980 s 28(1), (5).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1178. Successive disabilities.

1178. Successive disabilities.

If at the time when one disability¹ ceases another has already supervened, time does not begin to run, it seems, until the second disability ceases².

When, however, a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time may be allowed by reason of the disability of the second person³.

If the cause of action survives to them, the personal representatives will have a right of action after the death of a deceased person who was continuously under disability from the time when the right of action accrued to him⁴.

1 As to the meaning of 'disability' see PARA 1170.

2 *Borrows v Ellison* (1871) LR 6 Exch 128 (decided under the Real Property Limitation Act 1833 s 17 (repealed)).

The 30 years' maximum prescribed for the recovery of unregistered land or money charged on land may not, however, be exceeded (see PARA 1172); neither may the 15 years' maximum prescribed for claims in negligence where the damage was not discoverable within the limitation period (see PARAS 982, 1173); nor the ten years' maximum prescribed for claims in respect of defective products (see PARAS 1003-1004, 1174).

3 Limitation Act 1980 s 28(3).

4 See *Strithorst v Graeme* (1770) 2 Wm Bl 723; *Townsend v Deacon* (1849) 3 Exch 706 at 711-712; and PARAS 1037-1038.

It seems that if there has been an intestacy and the right of action is not for the recovery of land time may not begin to run until letters of administration have been taken out: see PARA 1038; *Flood v Patterson* (1861) 29 Beav 295; and *Story v Fry* (1842) 1 Y & C Ch Cas 603.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1179. Joint contractors.

1179. Joint contractors.

Where one or more joint promisees may take proceedings to enforce performance of the promise on behalf of all of them¹, time runs even though one of the joint promisees is under a disability². If, however, one of two or more joint contractors, whose liability is not also several, is under a disability, it may be that time will not run against all until the disability of the one has ceased³.

1 The rule that all joint promisees should be claimants in a claim on the contract does not apply where the promise is made to them severally as well as jointly: see generally **CONTRACT** vol 9(1) (Reissue) PARAS 1080-1084.

2 This is the principle of *Perry v Jackson* (1792) 4 Term Rep 516, as explained in *Fannin v Anderson* (1845) 7 QB 811 at 823. The disability of absence beyond the seas, with which these decisions were concerned, was abolished as regards claimants by the Mercantile Law Amendment Act 1856 s 10 (repealed). As to the unity of obligation under a joint contract see **CONTRACT** vol 9(1) (Reissue) PARA 1079. It may, perhaps, be possible to add a joint promisee under a disability as defendant where he cannot be joined as claimant: see **CONTRACT** vol 9(1) (Reissue) PARA 1081. As to the meaning of 'disability' see PARA 1170.

3 The Limitation Act 1980 s 28(1) (see PARA 1171) does not expressly provide for this. The text states the rule formerly established in *Towns v Mead* (1855) 16 CB 123 and *Fannin v Anderson* (1845) 7 QB 811, which were both cases of disability by absence beyond the seas. See also *Roddam v Morley* (1857) 1 De G & J 1. This rule was negated by the Mercantile Law Amendment Act 1856 s 11 (repealed). If, however, the defendant under a disability could have been joined in a claim against the other joint contractors (see *Robinson v Geisel* [1894] 2 QB 685, CA), there seems no reason for time not running against them.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(2) DISABILITY/1180. Possession on behalf of a minor.

1180. Possession on behalf of a minor.

If a parent is in possession of land belonging to a minor, the parent will, in ordinary circumstances, be presumed to have entered on it as the minor's guardian or bailiff, and the parent's possession during the minority is one on which the statute of limitation will not operate in his or her favour¹.

The entry on and possession of a minor's land by some person other than a parent may make the same rule applicable to the entry and possession².

Where the person so held to be guardian or bailiff continues in possession after the minority has ceased, he is supposed to continue in possession in the same capacity as before, unless something is done to change the character of the possession, and the statute will not run even after the minority has ceased until the character of the possession is changed³.

1 *Thomas v Thomas* (1855) 2 K & J 79; *Re Hobbs, Hobbs v Wade* (1887) 36 ChD 553; *Mulhern v Dorian* (1883) 17 ILT 74; cf *MacCormack v Courtney* [1895] 2 IR 97; *Re Maguire and M'Clelland's Contract* [1907] 1 IR 393, CA. As to the capacity of a minor in relation to property see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 30 et seq; and as to the legal capacity of minors generally see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 12 et seq.

2 *Pelly v Bascombe* (1863) 4 Giff 390 (affd (1865) 5 New Rep 231); *Nanney v Williams* (1856) 22 Beav 452; *Howard v Earl of Shrewsbury* (1874) LR 17 Eq 378 at 397; *Lambert v Browne* (1870) IR 5 CL 218; *Quinton v Frith* (1868) 2 IR Eq 396; *McMahon v Hastings* [1913] 1 IR 395.

3 *Re Hobbs, Hobbs v Wade* (1887) 36 ChD 553; *Wall v Stanwick* (1887) 34 ChD 763; *Tinker v Rodwell* (1893) 69 LT 591; *Mulhern v Dorian* (1883) 17 ILT 74; *McMahon v Hastings* [1913] 1 IR 395. The burden of proof is upon the person alleging the change in the character of the possession relied upon: *Tinker v Rodwell* at 592; *Rice v Begley* [1920] 1 IR 243 at 255.

It was held in *Smyth v Byrne* [1914] 1 IR 53, CA that the same principle applied in the case of persons of unsound mind, and that a person who entered on the land of a person of unsound mind, with knowledge of the infirmity and of that person's rights, became a bailiff in respect of that person's estate in the land; quare whether this applies in the case of a person lacking capacity within the meaning of the Mental Capacity Act 2005 (see PARA 1170 note 2; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(3) ACKNOWLEDGMENT AND PART PAYMENT/(i) Fresh Accrual of Claim/1181. Fresh accrual of claim on acknowledgment or part payment.

(3) ACKNOWLEDGMENT AND PART PAYMENT

(i) Fresh Accrual of Claim

1181. Fresh accrual of claim on acknowledgment or part payment.

The Limitation Act 1980 lays down provisions for the exclusion of time limits in cases of acknowledgment or part payment in certain claims¹. A current period of limitation may be repeatedly extended under these provisions by further acknowledgments and part payments; but a right of action, once barred by the 1980 Act, cannot be revived by any subsequent acknowledgment or payment².

1 See the Limitation Act 1980 s 29; and PARAS 1182-1184. As to what constitutes acknowledgment see PARA 1185 et seq. As to what constitutes a part payment see PARA 1194 et seq.

2 Limitation Act 1980 s 29(7). A payment of a part of the rent or interest due at any time does not, however, extend the period for claiming the remainder then due, but any payment of interest is treated as a payment in respect of the principal debt: s 29(6).

However, where an adverse possessor of unregistered land, in whose favour time has run, has acknowledged that his former possession was by licence and consent of the owner, he will be estopped from claiming title to the land: see *Colchester Borough Council v Smith* [1992] Ch 421, [1992] 2 All ER 561, CA; and PARA 1095.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(3) ACKNOWLEDGMENT AND PART PAYMENT/(i) Fresh Accrual of Claim/1182. Claims to recover unregistered land and foreclosure claims.

1182. Claims to recover unregistered land and foreclosure claims.

Where any right of action, including a foreclosure claim, to recover unregistered land¹ has accrued, or any right of a mortgagee of personal property to bring a foreclosure claim in respect of the property has accrued, and the person in possession² of the land, benefice or personal property acknowledges the title of the person to whom the right of action has accrued, the right is deemed to have accrued on and not before the date of the acknowledgment³. Similarly, in the case of a foreclosure or other claim by a mortgagee, if the person in possession of the mortgaged property⁴, benefice or personal property in question or the person liable for the mortgage debt makes any payment in respect of the debt, whether of principal or interest, the right of action is deemed to have accrued on and not before the date of the payment⁵.

These provisions apply to a right of action to recover unregistered land which has accrued to a person who is entitled to an estate or interest taking effect on the determination of an entailed interest and against whom time is running under the limitation provision relating to defective disentailing assurances⁶, and on the making of the acknowledgment that provision ceases to apply to the land⁷.

1 As to the construction of references to a right of action to recover unregistered land see the Limitation Act 1980 s 38(7), (8), (9); and PARAS 1016, 1025, 1168. As to the meaning of 'land' see PARA 1018. For the effect of an acknowledgment in relation to claims to recover land from an adverse possessor see PARA 1081. As to the disapplication of time limits under the Limitation Act 1980 (and hence the disapplication of s 29) in the case of registered land see PARA 1029.

2 As to the meaning of 'possession' in the case of unregistered rentcharges see PARA 1072.

3 Limitation Act 1980 s 29(1), (2)(a). Subject to the estoppel exception laid down in *Colchester Borough Council v Smith* [1992] Ch 421, [1992] 2 All ER 561, CA (see PARA 1095), it seems that it is not possible for an extinguished title to be revived by acknowledgment: see PARA 1181. As to pleading an acknowledgment see PARA 946. As to what constitutes an acknowledgment see generally PARA 1185 et seq. The provisions of the Limitation Act 1980 s 29(2) were first added in the Limitation Act 1939 s 23(1) (repealed), and superseded the former judge-made law; authorities earlier than 1940 must therefore be treated with great caution.

4 Under the former law it was held that an assignee of the equity of redemption was the mortgagor's agent for the purpose of making a payment to the mortgagee; such an assignee will now normally be capable of making an acknowledgment as a person in possession: *Forsyth v Bristowe* (1853) 8 Exch 716; *Dibb v Walker* [1893] 2 Ch 429; *Bradshaw v Widdrington* [1902] 2 Ch 430, CA; and see PARA 1200.

5 Limitation Act 1980 s 29(3). As to the persons by and to whom part payment may be made see PARAS 1197-1203. As to what constitutes a part payment see generally PARA 1194 et seq. Payment accompanied by denial of the balance of the debt does not cause time to run: *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 2 All ER 481, [1977] 1 WLR 565; and see PARA 1184.

6 I.e. the Limitation Act 1980 s 27: see PARA 1041.

7 Limitation Act 1980 s 29(1), (2)(b). As to the application of that Act in relation to entailed interests see also PARAS 1046, 1101. As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(3) ACKNOWLEDGMENT AND PART PAYMENT/(i) Fresh Accrual of Claim/1183. Redemption claims.

1183. Redemption claims.

Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land which is unregistered¹ and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the mortgagor's title or his equity of redemption, a claim to redeem the land in his possession may be brought at any time before the expiration of 12 years from the date of the payment or acknowledgment².

No period of limitation under the Limitation Act 1980 in relation to the redemption of land runs against any person in relation to a registered estate in land or registered rentcharge³.

1 As to the meaning of 'land' see PARA 1018.

2 Limitation Act 1980 s 29(4). As to the proper recipient for an acknowledgment see PARA 1185; and as to the proper recipient of a part payment see PARA 1197.

3 See the Land Registration Act 2002 s 96(2); and PARA 1017.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(3) ACKNOWLEDGMENT AND PART PAYMENT/(i) Fresh Accrual of Claim/1184. Claims to recover debts and legacies.

1184. Claims to recover debts and legacies.

Where any right of action has accrued¹ to recover any debt or other liquidated pecuniary claim², or any claim to the personal estate of a deceased person or to any share or interest in any such estate, and the person liable or accountable for the claim acknowledges the claim³ or makes any payment in respect of it, the right is deemed to have accrued on and not before the date of the acknowledgment or payment⁴. A payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but any payment of interest is treated as a payment in respect of the principal debt⁵.

In deciding whether a payment amounts to an acknowledgment of a debt for the purposes of the legislation, the court will look at the act and intention of the debtor to see whether the payment was made 'in respect of a particular debt', and therefore at the actual position as understood by the parties at the time of payment, rather than at the analysis which the law might place on that payment⁶.

1 As to the meaning of 'right of action' and the construction of references to the date of accrual of such a right see PARA 1168.

2 There is no statutory provision rendering an acknowledgment of any effect in the case of a claim founded on tort or on contract where the claim is for unliquidated damages: see eg *Boydell v Drummond* (1808) 2 Camp 157 (claim founded on breach of contract to perform act); *Hurst v Parker* (1817) 1 B & Ald 92 (tort); and see also *Short v McCarthy* (1820) 3 B & Ald 626; and *Blair v Ormond* (1851) 17 QB 423 at 436.

A claim for damages in tort is not a 'liquidated pecuniary claim' for these purposes: *Dwr Cymru v Carmarthenshire County Council* [2004] EWHC 2991 (TCC), [2004] All ER (D) 307 (Oct). Nor is a claim for compensation for compulsory purchase which has not been determined by the Lands Tribunal: *BP Oil UK Ltd v Kent County Council* [2003] EWCA Civ 798, [2004] 1 P & CR 416, [2003] 3 EGLR 1. A claim by a solicitor for his fees on an aborted transaction is, however, a liquidated pecuniary claim because it is a sufficiently certain contractual description for its amount to be ascertainable by the court: *Byatt v Nash* [2002] All ER (D) 254 (Jun); and see *Amantilla Ltd v Telefusion plc* (1987) 9 ConLR 139. It has been doubted whether a claim for an account falls within the Limitation Act 1980 s 29: *Mehra v Shah* [2003] EWHC 2085 (Ch), [2003] All ER (D) 15 (Aug); affd without discussion of this point [2004] EWCA Civ 632, [2004] All ER (D) 283 (May).

3 For there to be an acknowledgment of a claim, there must be an admission that there is a debt or other liquidated amount outstanding and unpaid: see *Good v Parry* [1963] 2 QB 418, [1963] 2 All ER 59, CA.

4 Limitation Act 1980 s 29(5). A statement is an acknowledgment of the claim where the debtor admits his indebtedness and legal liability to pay; if he denies the liability in some way, ie by set-off or counterclaim, the statement is not an acknowledgment and the time does not begin to run afresh: *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 2 All ER 481, [1977] 1 WLR 565. Similarly a part payment can only start time running afresh if it amounts to an admission that the debt remains due: *Surrendra Overseas Ltd v Government of Sri Lanka*.

When a debt is acknowledged, the cause of action, if already existing, accrues afresh, but there is not a new cause of action: see *Busch v Stevens* [1963] 1 QB 1, [1962] 1 All ER 412. See also *Lovell v Lovell* [1970] 3 All ER 721, [1970] 1 WLR 1451, CA, where leave was not granted to serve an interrogatory the answer to which could constitute a clear acknowledgment that a debt is due and owing and so deprive a defendant of the defence of the Limitation Act 1980 s 29(5); and *Re Gee & Co (Woolwich) Ltd* [1975] Ch 52, [1974] 1 All ER 1149, where a company's balance sheet, signed by the directors, was an effective acknowledgment. Under the Civil Procedure Rules (the 'CPR'), interrogatories have been replaced by requests to provide further information: see **CIVIL PROCEDURE** vol 11 (2009) PARA 611.

As to the persons by and to whom an acknowledgment may be made see PARA 1185.

5 Limitation Act 1980 s 29(6). As to continual extension of the limitation period see PARA 1181.

6 *Kleinwort Benson Ltd v South Tyneside Metropolitan Borough Council* [1994] 4 All ER 972, where it was held that payments made by the defendants in the mistaken belief that they were discharging a legal liability (in respect of contracts later held to have been void from the outset) did not serve as an acknowledgment by the defendants of a liability to make restitution to the claimants of sums earlier received by the defendants.

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(ii) Constituent Elements of Acknowledgment

A. BY AND TO WHOM ACKNOWLEDGMENT MAY BE MADE

1185. Statutory requirements.

Every acknowledgment must be in writing and signed by the person making the acknowledgment¹. For these purposes, any acknowledgment or payment may be made by the agent of the person by whom it is required to be made²; and must be made to the person, or to an agent of the person, whose title or claim is being acknowledged³. A person is not an agent for the purpose of making an acknowledgment or part payment unless he is duly authorised to make it⁴. A minor may make a valid acknowledgment of a debt if the debt is for necessities supplied to him⁵.

An acknowledgment which has been obtained by undue influence is of no effect and cannot be relied on by the creditor⁶.

1 Limitation Act 1980 s 30(1). The typed signature of a person's agent on a telex constitutes acknowledgment by that person of the debt: *Good Challenger Navegante SA v Metalexportimport SA, The Good Challenger* [2003] EWCA Civ 1668, [2004] 1 Lloyd's Rep 67, [2003] All ER (D) 320 (Nov). A person's signature on the counterpart to an invalid lease can constitute acknowledgment: *Rehman v Benfield* [2006] EWCA Civ 1392, [2007] 2 P & CR 317, [2006] All ER (D) 319 (Oct). The signature may appear at the head of the acknowledgment (*Holmes v Mackrell* (1858) 3 CBNS 789), or be by initials (*Lord St John v Boughton* (1838) 9 Sim 219). If the acknowledgment is unsigned, the fact that it is accompanied by and referred to in a signed letter may not, it seems, suffice: see *Ingram v Little* (1883) Cab & El 186; and *Clark v Alexander* (1844) 8 Scott NR 147 (signature not proved to be that of partner).

2 Limitation Act 1980 s 30(2)(a).

3 Limitation Act 1980 s 30(2)(b).

4 *Newbould v Smith* (1886) 33 ChD 127, CA (payments of interest to mortgagee by mortgagor's solicitor, after the solicitor had ceased to act for the mortgagor, held to be ineffective); *Curwen v Milburn* (1889) 42 ChD 424 at 431-432, CA, per North J (solicitors instructed to obtain client's deeds from client's former solicitors authorised to inquire about unsettled bills of costs which might give former solicitor lien on deeds); *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch 104, [1943] 1 All ER 48, CA (husband executor of wife's estate; solicitors acting in executorship not authorised to acknowledge to husband's trustee in bankruptcy existence of debt owing from the estate to the husband); *Wright v Pepin* [1954] 2 All ER 52, [1954] 1 WLR 635 (solicitors instructed to put mortgagor's affairs in order had implied authority to acknowledge existence of mortgage by asking mortgagees for forbearance). Authority to make an acknowledgment or part payment may be inferred: *Wright v Pepin*; *Jones v Hughes* (1850) 5 Exch 104. In the case of a mortgage, a receiver is the mortgagor's agent: *Chinnery v Evans* (1864) 11 HL Cas 115; see also *Re Hale, Lilley v Foad* [1899] 2 Ch 107, CA; and *Wandsworth Union v Worthington* [1906] 1 KB 420. Trustees of a will are not normally agents of a beneficiary who has mortgaged his interest under it for the purpose of making an acknowledgment to the mortgagee: *Re Edwards' Will Trusts, Brewer v Gething* [1937] Ch 553, [1937] 3 All ER 58. Auditors are not agents of a company so as to make a balance sheet, to which their signed certificate is appended, an acknowledgment of a debt owed by the company: *Re Transplanter (Holding Co) Ltd* [1958] 2 All ER 711, [1958] 1 WLR 822 (signature of directors ineffective to constitute balance sheet an acknowledgment as one was creditor to whom debt owed). See, however, *Bradford and Bingley plc v Cutler* (2008) Times, 22 February, CA, cited in PARA 1198. See also PARA 1193.

5 *Willins v Smith* (1854) 4 E & B 180. As to a minor's power to bind himself to pay for necessities see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 18. When a minor reaches full age he may be able to ratify an acknowledgment by an agent: *Trulock v Robey* (1841) 12 Sim 402.

6 *Lloyd v Coote and Ball* [1915] 1 KB 242.

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B. FORM OF ACKNOWLEDGMENT

1186. General form.

An acknowledgment must be in writing and signed by the maker or his agent¹, but, subject to these requirements, need not be in any particular form². All that is necessary is that the debtor should recognise the existence of the debt or other liquidated amount outstanding and unpaid or that the person who might rely on the statute of limitation should clearly recognise the rights against himself³. Whether a document is or is not an acknowledgment depends on what the document states⁴.

In determining whether a document is a sufficient acknowledgment, the court will look at the circumstances in which it was written, and will construe it in the way in which the writer intended it to be construed by the person to whom it is addressed⁵.

1 See the Limitation Act 1980 s 30(1); and PARA 1185.

2 See eg *Stansfield v Hobson* (1853) 3 De GM & G 620; and *Thompson v Bowyer* (1863) 9 Jur NS 863 (cases relating to the sufficiency of acknowledgments by mortgagees of the right to redeem).

3 *Wright v Pepin* [1954] 2 All ER 52 at 55, [1954] 1 WLR 635 at 640. See also *Good v Parry* [1963] 2 QB 418, [1963] 2 All ER 59, CA; *Dungate v Dungate* [1965] 3 All ER 818, [1965] 1 WLR 1477, CA (express reference to amount of claim not required for acknowledgment; approved in *Bradford and Bingley plc v Rashid* [2006] UKHL 37, [2006] 4 All ER 705, [2006] 2 All ER (Comm) 951; and applied in *Ross v McGrath* [2004] EWCA Civ 1054, [2004] All ER (D) 238 (Jul)); and *Kamouh v Associated Electrical Industries International Ltd* [1980] QB 199, [1979] 2 WLR 795.

4 *Jones v Bellgrove Properties Ltd* [1949] 2 KB 700 at 704, [1949] 2 All ER 198 at 201, CA, where oral evidence was admitted to show that part of a sum shown in a balance sheet as due to creditors was due to the claimant. Under the legislation concerning acknowledgments which was in force before the Limitation Act 1939 (repealed), it has been held that a date might be supplied by oral evidence (*Edmunds v Downes* (1834) 2 Cr & M 459 at 463, 3 LJ Exch 98 at 100; cf the report of this case in 4 Tyr 173 at 179); that the creditor's name might be supplied by oral evidence (*Hartley v Wharton* (1840) 11 Ad & El 934); that oral evidence might be used to identify the debt (*Spickernell v Hotham* (1854) Kay 669; *Bewley v Power* (1833) Hayes & Jo 368; *Whitcombe v Steere* (1903) 19 TLR 697; and *McGuffie v Burleigh* (1898) 78 LT 264 (two letters connected by oral evidence); *Hanan v Power* (1845) 8 ILR 505; *Dugdale v Vize* (1843) 5 ILR 568 (which, however, are not good authorities in so far as they decide that the inclusion of a debt in an insolvent's schedule of debts is a good acknowledgment: see PARA 1193); cf *Kennett v Milbank* (1831) 8 Bing 38); and that secondary evidence might be given of the contents of a lost acknowledgment (*Haydon v Williams* (1830) 7 Bing 163; and see *Read v Price* [1909] 2 KB 724, CA). An acknowledgment is now, in general, exempt from stamp duty as no provision of the Stamp Act 1891 imposes liability to duty on an acknowledgment as such. If, however, a document which is alleged to constitute an acknowledgment attracts stamp duty by virtue of other characteristics, it will be inadmissible in evidence unless properly stamped: see **CIVIL PROCEDURE** vol 11 (2009) PARAS 959-960.

5 *Trulock v Robey* (1841) 12 Sim 402 at 406.

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1187. Amount of debt to be ascertainable.

For an acknowledgment of a debt to be effective the amount of the debt must either be quantified in figures, or be capable of ascertainment by calculation or extrinsic evidence without the parties' further agreement¹.

An undertaking to pay a solicitor any sum which may be found due to him for costs, when they are assessed and certified, takes the amount as settled by assessment out of the effect of the limitation period².

1 *Good v Parry* [1963] 2 QB 418, [1963] 2 All ER 59, CA; *Dungate v Dungate* [1965] 3 All ER 818, [1965] 1 WLR 1477, CA; and see *Bradford and Bingley plc v Rashid* [2006] UKHL 37, [2006] 4 All ER 705, [2006] 2 All ER (Comm) 951; *Ross v McGrath* [2004] EWCA Civ 1054, [2004] All ER (D) 238 (Jul). For decisions on the law prior to the limitation legislation see *Bewley v Power* (1833) Hayes & Jo 368; *Lechmere v Fletcher* (1833) 1 Cr & M 623; *Bird v Gammon* (1837) 3 Bing NC 883; *Lord St John v Boughton* (1838) 9 Sim 219; *Gardner v M'Mahon* (1842) 3 QB 561; *Edwards and Godwin v Culley* (1859) 4 H & N 377; *Skeet v Lindsay* (1877) 2 Ex D 314; and *Langrish v Watts* [1903] 1 KB 636, CA. As to the relevance since 1939 of the last two cases see *Good v Parry* at 424 and at 61 per Denning MR.

2 *Archer v Leonard* (1863) 15 I Ch R 267; *Curwen v Milburn* (1889) 42 ChD 424, CA; *Nichols v Regent's Canal Co* (1894) 63 LJQB 641 (revsd on another point sub nom *Nichols v North Metropolitan Rly and Canal Co* (1894) 7 ILT 836, CA). As to the assessment of statute-barred items in a solicitor's bill see *Re Brockman* [1909] 2 Ch 170, CA.

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1188. Accounts.

For the purpose of a claim for an account¹, it has been held that it is enough if there is an acknowledgment that an account is pending². An agreed statement of accounts in which all the items are on one side only, and which is not signed by the party liable and inoperative as an acknowledgment, will not be allowed to support a claim on an account stated in respect of items which are statute-barred³. If however, there are items on both sides and a balance is struck, this amounts to a fresh agreement between the parties upon which the party in whose favour the balance is shown can sue⁴.

It has, however, recently been doubted whether acknowledgment is available in response to a limitation defence to a claim for account⁵.

1 As to the limitation period for claims for account see PARAS 1008-1009.

2 *Langrish v Watts* [1903] 1 KB 636, CA; *Prance v Sympson* (1854) Kay 678; cf *Friend v Young* [1897] 2 Ch 421.

3 *Clark v Alexander* (1844) 8 Scott NR 147; *Brenan v Crawley* (1868) 16 WR 754; *Jones v Ryder* (1838) 4 M & W 32; *Nash v Hill* (1858) 1 F & F 198.

4 See PARA 1204.

5 See *Mehra v Shah* [2003] EWHC 2085 (Ch), [2003] All ER (D) 15 (Aug); affd without discussion of this point [2004] EWCA Civ 632, [2004] All ER (D) 283 (May).

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1189. Acknowledgment of right to redeem unregistered land.

In order to keep alive a mortgagor's right to redeem unregistered land, an acknowledgment must be signed by the mortgagee or other person claiming through him, or by his agent, and it must be given to the mortgagor or his agent¹. If given to a third person it is of no avail². An acknowledgment by a mortgagee in a deed assigning the mortgage and the mortgaged property to a third person, the mortgagor not being a party³, or an acknowledgment by the mortgagee to the mortgagor after the mortgagor has become bankrupt⁴, is insufficient. In order that the person to whom an acknowledgment is given should be the mortgagor's agent, it is sufficient that he has acted as agent or has been treated as such by the person making the acknowledgment⁵.

If a mortgagee has entered into possession, accounts of his receipt of rents are not a sufficient acknowledgment unless they are signed by him and kept for or communicated to the mortgagor or his agent⁶.

1 See the Limitation Act 1980 s 30; and PARA 1185. Note that no period of limitation under the 1980 Act in relation to the redemption of land runs against any person in relation to a registered estate in land or registered rentcharge, and hence ss 29, 30 are of no application: see PARA 1017.

2 *Batchelor v Middleton* (1848) 6 Hare 75 at 83; *Wilson v Walton and Kirkdale Permanent Building Society* (1903) 19 TLR 408; *Re Metropolis and Counties Permanent Investment Building Society, Gatfield's Case* [1911] 1 Ch 698; *Re Huddleston's Estate* [1920] 1 IR 29.

3 *Lucas v Dennison* (1843) 13 Sim 584.

4 *Markwick v Hardingham* (1880) 15 ChD 339, CA; *Re Huddleston's Estate* [1920] 1 IR 29.

5 *Trulock v Robey* (1841) 12 Sim 402.

6 See *Baker v Wetton* (1845) 14 Sim 426; and *Re Alison, Johnson v Mounsey* (1879) 11 ChD 284, CA.

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1190. Acknowledgment of title to unregistered land.

In relation to claims for the recovery of unregistered land, any acknowledgment in writing is sufficient to start time running afresh, if from it there may fairly be implied an admission that the person to whom it is given is the owner of the land in question¹. Thus, a correspondence from which it appears that the person in possession claims to hold the property until certain accounts as to charges on it, to which he claims to be entitled, are settled will be sufficient to start time running afresh². If, in answer to a claim for rent, the person in possession does not deny the title of the person entitled but asks for more time, this may be sufficient to start time running afresh³. An admission by the person in possession that he holds the property as tenant of the person entitled is sufficient⁴; and so is an offer to take a lease, whether or not the offer is accepted⁵; a petition from squatters to the local authority which owned the property asking it not to exercise its power of sale to a housing association⁶; and a letter from a squatter in a local authority's property asking for funds to refurbish the authority's property⁷. A covenant to pay a mortgage debt in a deed executed subsequently to and referring to the mortgage is an acknowledgment of the existence of the relation of mortgagor and mortgagee, and therefore of the mortgagee's title⁸.

An acknowledgment made within 12 years of claim admitting that the person claiming the property had a title more than 12 years before claim is not sufficient, as it is quite consistent with the non-existence of the title at the time when the acknowledgment was made; but an acknowledgment within the 12 years admitting that the person claiming had a title at a time within the 12 years, although not expressly admitting title at the time when the acknowledgment is made, is, it would seem, sufficient⁹. An admission that a person has recovered judgment in a claim for possession may not be an admission of title, for it is consistent with an assertion that the judgment was wrong and that the person had no title at all¹⁰ and it has been held that an unexecuted judgment does not operate as a declaration of title or as an acknowledgment of the claimant's title¹¹. A defence and counterclaim in earlier proceedings may be an acknowledgment of the claimant's title but not necessarily that the claimant is entitled to possession¹².

1 See the Limitation Act 1980 s 29(1); and PARA 1182. To be effective for the purposes of s 29, an acknowledgment must be in writing and must be signed by the person making it: s 30; and see PARA 1185. Note that limitation periods under the 1980 Act are disapplied in relation to registered land, and hence ss 29, 30 are of no application: see PARAS 1017, 1029.

The owner does not have to know who is in possession, and the person acknowledging does not have to know who the owner is, but the acknowledgment must be by or on behalf of the person in possession: *Allen v Matthews* [2007] EWCA Civ 216, [2007] 2 P & CR 441, [2007] All ER (D) 223 (Mar).

2 *Incorporated Society in Dublin for Promoting English Protestant Schools in Ireland v Richards* (1841) 1 Dr & War 258.

3 *Fursdon v Clogg* (1842) 10 M & W 572.

4 *Goode v Job* (1858) 28 LQB 1.

5 *Dublin Corpn's Lessee v Judge* (1847) 11 ILR 8; *Doe d Curzon v Edmonds* (1840) 6 M & W 295. See also *Edginton v Clark* [1964] 1 QB 367, [1963] 3 All ER 468, CA (request by squatter to freeholder to be allowed to purchase); *Rehman v Benfield* [2006] EWCA Civ 1392, [2007] 2 P & CR 317, [2006] All ER (D) 319 (Oct) (signature on the counterpart to an invalid lease capable of constituting acknowledgment)

6 *Lambeth London Borough Council v Bigden* [2000] EWCA Civ 302, (2000) 33 HLR 43, sub nom *Bigden v Lambeth London Borough Council* [2000] All ER (D) 2076; distinguished in *Allen v Matthews* [2007] EWCA Civ 216, [2007] 2 P & CR 441, [2007] All ER (D) 223 (Mar).

7 *Archangel v Lambeth London Borough Council* [2000] All ER (D) 2077, CA.

8 *Jayne v Hughes* (1854) 10 Exch 430.

9 *Hobson's Lessee v Burns* (1849) 13 ILR 286.

10 See *Hobson's Lessee v Burns* (1849) 13 ILR 286.

11 See *Derham v Doyle* [1914] 2 IR 135, CA. See also *Re Flynn (No 2)*, *Flynn v Flynn* [1969] 2 Ch 403, [1969] 2 All ER 557; and *Horner v Cartwright* (11 July 1989, unreported), CA.

12 See *Ofulue v Bossert* [2008] EWCA Civ 7, (2008) Times, 11 February, [2008] All ER (D) 236 (Jan).

UPDATE

1190 Acknowledgment of title to unregistered land

NOTE 12--*Ofulue*, cited, reported at [2008] 3 WLR 1253.

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1191. Acknowledgment by court proceedings.

If the tenant for life of a fund subject to legacies becomes mentally disordered, and the fund is transferred into court and invested in an account which is called the account of the mentally disordered person and of the legatees, this acts as an acknowledgment by the mentally disordered person of the legatees' claim¹. The certificate of a master of the court in a claim in which a debtor is a defendant, is not, however, a sufficient acknowledgment, the master not being the debtor's agent². A defence which denies liability is not an acknowledgment even if it fails³. An answer to a request to provide further information⁴ may be an acknowledgment⁵.

1 *Re Walker* (1871) 7 Ch App 120. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

2 *Hill v Stawell* (1840) 2 ILR 302; and see PARA 1184. The creditor in *Hill v Stawell* was not a party to the suit: see *Wrixon v Vize* (1842) 3 Dr & War 104 at 123.

3 *Re Flynn (No 2)*, *Flynn v Flynn* [1969] 2 Ch 403, [1969] 2 All ER 557. See also *Horner v Cartwright* (11 July 1989, unreported), CA.

4 Formerly known as an 'interrogatory'. As to requests to provide further information see **CIVIL PROCEDURE** vol 11 (2009) PARA 611.

5 See *Lovell v Lovell* [1970] 3 All ER 721, [1970] 1 WLR 1451, CA, where an interrogatory was disallowed as the answer would have constituted an acknowledgment.

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1192. Acknowledgment by trustees.

An acknowledgment by the agent of trustees under a will by which property bought by the testator, but not paid for, is devised will keep alive the vendor's lien as against the beneficiary¹; and an acknowledgment of a debt by a trustee to whom land is devised on trust to pay debts may be sufficient to take the debt out of the effect of the limitation period².

In the case of a lien on land, the person who, by himself or his agent, may make a valid acknowledgment is the person entitled to the land on which the charge is sought to be fixed, and who will lose the land if he does not pay the charge³.

1 *Toft v Stephenson* (1851) 1 De GM & G 28.

2 *Lord St John v Boughton* (1838) 9 Sim 219. As to an acknowledgment by the agent of the owner of the equity of redemption see *Waters v Lloyd* [1911] 1 IR 153, CA; and PARA 1200.

3 *Toft v Stephenson* (1851) 1 De GM & G 28 at 40 per Lord Cranworth LC.

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1193. Documents amounting to acknowledgments.

The following documents have been held to be or to contain acknowledgments: company balance sheets, in the case of debts owed to persons other than the persons signing the balance sheets¹; a building society's accounts²; and certain documents in judicial proceedings³.

In Ireland an admission in a will of the existence of a debt of a specified amount as due to a named creditor has been held to be a good acknowledgment on the ground that such an acknowledgment is directed to all persons named in the will⁴.

An entry in a minute book kept by commissioners appointed under an Act has been held not to be an acknowledgment to their clerk of arrears of salary due to him⁵. An entry in a company's books relating to unclaimed dividends does not amount to an acknowledgment to a shareholder to whom dividends have not been paid, at any rate where no special part of the company's assets is set aside as representing the dividends and no notice of the entry is given to the shareholder⁶. Although an admission of a debt by an administrator in a signed deposition or cross-examination is sufficient to prevent the operation of the limitation period⁷, an advertisement to creditors to bring in their claims⁸, or an admission of a debt by a debtor in bankruptcy proceedings⁹ or in the schedule to a deed of arrangement¹⁰, or an admission of a debt by a personal representative in a probate claim¹¹, has no such effect. A communication made without prejudice in negotiations genuinely aimed at settlement is inadmissible as evidence and hence cannot be acknowledgment¹²; but letters from the debtor's agent which treated the debt as an undisputed liability and dealt only with whether and to what extent the debtor could meet that liability were held not to be so protected¹³.

1 See *Re Overmark Smith Warden Ltd* [1982] 3 All ER 513, [1982] 1 WLR 1195; *Jones v Bellgrove Properties Ltd* [1949] 2 KB 700, [1949] 2 All ER 198, CA (debt owed to shareholder; balance sheet presented to shareholder as such); cf, however, *Consolidated Agencies Ltd v Bertram Ltd* [1965] AC 470, [1964] 3 All ER 282, PC, where it was said that *Jones v Bellgrove Properties Ltd* was correctly decided on its facts but is not an authority for the view that a signature on a balance sheet is in all circumstances an acknowledgment of an existing liability. See also *Re Atlantic and Pacific Fibre Importing and Manufacturing Co Ltd*, *Viscount Burnham v Atlantic and Pacific Fibre Importing and Manufacturing Co Ltd* [1928] Ch 836 (debt owed to debenture holders; balance sheets are acknowledgments, even though not presented to debenture holders); and *Ledingham v Bermejo Estancia Co Ltd* [1947] 1 All ER 749. A balance sheet does not, however, constitute an acknowledgment in respect of fees due to, or a loan made by, a director who has signed it in order to comply with statutory requirements, as it is not competent for a director in his fiduciary capacity as such to give an acknowledgment to himself: *Re Coliseum (Barrow) Ltd* [1930] 2 Ch 44; *Re Transplanters (Holding Co) Ltd* [1958] 2 All ER 711, [1958] 1 WLR 822; see also *Lowndes v Garnett and Moseley Gold Mining Co of America Ltd* (1864) 33 LJ Ch 418 (resolution of board of directors, at which creditor present as director, not good acknowledgment); and *Ledingham v Bermejo Estancia Co Ltd* (acknowledgments made in accounts of company over period of years and accounts passed by company; acknowledgments not vitiated by fact that during part of period they were made by directors to themselves as trustees of an estate). See also *Re Gee & Co (Woolwich) Ltd* [1975] Ch 52, [1974] 1 All ER 1149 (an acknowledgment by the board of directors of a debt due to themselves is effective if sanctioned by every member of the company).

2 *Re Metropolis and Counties Permanent Investment Building Society*, *Gatfield's Case* [1911] 1 Ch 698; *Wilson v Walton and Kirkdale Permanent Building Society* (1903) 19 TLR 408.

3 Eg chancery pleadings (*Blair v Nugent* (1846) 3 Jo & Lat 658; *Goode v Job* (1858) 28 LJQB 1); and witness statements or affidavits by a debtor in proceedings by a creditor (*Tristram v Harte* (1841) Long & T 186) or by a debtor's personal representative in an administration suit (*Read v Price* [1909] 1 KB 577 (affd [1909] 2 KB 724, CA)).

- 4 *Howard and Crowley v Hennessey and O'Leaky* [1947] IR 336, following *Millington v Thompson* (1852) 3 I Ch R 236; cf *Scott v Synge* (1891) 27 LR Ir 560, CA.
- 5 *Bush v Martin* (1863) 2 H & C 311.
- 6 *Re Severn and Wye and Severn Bridge Rly Co* [1896] 1 Ch 559.
- 7 *Re Beynon, Beynon v Beynon* [1873] WN 186.
- 8 *Scott v Jones* (1838) 4 Cl & Fin 382, HL, overruling *Andrews v Brown* (1714) Prec Ch 385; *Re Stephens, Warburton v Stephens* (1889) 43 ChD 39.
- 9 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502. The decisions in certain early Irish cases (see *Barrett v Birmingham* (1842) 4 I Eq R 537; *Morrogh v Power* (1842) 5 ILR 494; *Hanan v Power* (1845) 8 ILR 505; and see also *Re West's Estate* (1879) 3 LR Ir 77), that an admission of a debt by an insolvent in his schedule of debts amounted to an acknowledgment cannot be regarded as good authorities. An affidavit by a bankrupt admitting a statute-barred debt and made in chancery proceedings has been held inadmissible in bankruptcy proceedings: *Re Clendinning, ex p Anderson* (1859) 9 I Ch R 284.
- 10 *Re Levey, ex p Topping* (1865) 4 De GJ & Sm 551; *Lyll v Fluker* [1873] WN 208. As to an acknowledgment by a person on the eve of bankruptcy see PARA 1208.
- 11 See *Prendergast v O'Gorman* [1933] IR 460; and cases cited in **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 394. In *Maniram v Seth Rupchand* (1906) 22 TLR 619, PC, where a statement filed in an application for probate that the debtor had had open and current accounts with the deceased was held to be a good acknowledgment, no mention was made in the judgment of the principle that an acknowledgment to a stranger is not sufficient, and the case cannot, it is submitted, be treated as an authority; nor for the same reason can *Read v Price* [1909] 1 KB 577 (affd [1909] 2 KB 724, CA), where two affidavits sworn by the representative, one for the purposes of probate and the other in an administration suit, were held to be good acknowledgments, so far as it decided that the affidavit for probate was a good acknowledgment. An admission of a debt contained in an affidavit for the purpose of probate proceedings does not constitute sufficient acknowledgment as it is made, not to the creditor, but to the probate court: see *Bowring-Hanbury's Trustee v Bowring-Hanbury* [1943] Ch 104, [1943] 1 All ER 48, CA; and *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668.
- 12 See *Buckinghamshire County Council v Moran* [1990] Ch 623, [1989] 2 All ER 225, CA; and *Rush & Tompkins Ltd v GLC* [1989] AC 1280, [1988] 3 All ER 737, HL.
- 13 See *Bradford and Bingley plc v Rashid* [2006] UKHL 37, [2006] 4 All ER 705, [2006] 2 All ER (Comm) 951.

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(iii) Constituent Elements of Part Payment

A. INTRODUCTION

1194. Postponement of limitation period.

The postponement of the period of limitation where in an appropriate case the proper person either makes a payment in respect of the debt¹, or receives any sum in respect of it², has been previously mentioned³. In neither instance is a fresh promise to pay a necessary element of the part payment⁴. 'Part payment' is not itself defined⁵, but for the purposes of the Limitation Act 1980 any payment may be made by the agent of the person by whom it is required to be made and must be made to the person, or to an agent of the person, in respect of whose claim the payment is being made⁶. Part payment does not postpone the limitation period in relation to unliquidated claims⁷. It seems that a part payment may be made in both money or money's worth⁸.

1 The words 'makes any payment' are used in the Limitation Act 1980 s 29(3) (see PARA 1182) in relation to a foreclosure claim by a mortgagee, and in s 29(5) (see PARA 1184) in relation to a claim to recover a debt or other liquidated pecuniary claim or a claim to the personal estate of a deceased person.

2 The words 'receives any sum in respect of the principal or interest of the mortgage debt' are used in the Limitation Act 1980 s 29(4) (see PARA 1183) to describe the facts which postpone the time running against redemption where the mortgagee is in possession of unregistered land. See also PARA 1200.

3 See PARA 1181 et seq.

4 The historical requirement of a new promise (see eg *Foster v Dawber* (1851) 6 Exch 839 at 853) has been superseded by statute.

5 There is no definition of 'part payment' in the Limitation Act 1980. The description 'part payment' is not exact, for in s 29(4) the criterion is receipt, not payment: see note 2.

6 See the Limitation Act 1980 s 30(2); and PARA 1185.

7 See the Limitation Act 1980 s 29(5), which refers only to liquidated claims or debts; and PARAS 1182-1184.

8 See eg *Re Wilson and Wilson* [1937] Ch 675 (free accommodation and supply of foods); *Bodger v Arch* (1854) 10 Exch 333 (support of child of creditor); and *Beamish v Whitney* [1909] 1 IR 360 (provision of potatoes).

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1195. Proof of payment.

An oral acknowledgment by the debtor of a part payment is admissible in evidence¹, as also are entries made by a debtor of payment of interest². A memorandum of payment indorsed on a bill or note and signed by the debtor, or a memorandum of payment in his handwriting, is sufficient evidence of part payment³. Account books are admissible as evidence of the facts stated in them if the relevant statutory provisions are complied with⁴.

1 *Cleave v Jones* (1851) 6 Exch 573, Ex Ch, overruling *Willis v Newham* (1830) 3 Y & J 518; *Bevan v Gething* (1842) 3 QB 740; *Edwards v Janes* (1855) 1 K & J 534; *Collinson v Margesson* (1858) 27 LJ Ex 305; *Morley v Finney* [1870] WN 82. As to admissions in evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 776 et seq.

2 *Cleave v Jones* (1851) 6 Exch 573, Ex Ch; *Trentham v Deverill* (1837) 3 Bing NC 397; *Re Fountaine, Re Dowler, Fountaine v Lord Amherst* [1909] 2 Ch 382, CA. When interest on a debt due from a firm is calculated periodically in the books of the firm and carried to the capital account this is not evidence of payment, but evidence that no payment has been made: see *Jackson v Ogg* (1859) John 397.

3 *Purdon v Purdon* (1842) 10 M & W 562; *Eastwood v Saville* (1842) 9 M & W 615.

4 See the Civil Evidence Act 1995 ss 2, 8, 9; and **CIVIL PROCEDURE** vol 11 (2009) PARA 811 et seq.

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1196. Indorsement or memorandum of payment.

The question whether an indorsement or memorandum of payment made by the payee on a bond or other contractual document or in account books is admissible as evidence of part payment depends upon the ordinary rules of evidence¹. If it bears no date, the date at which it was made may be proved from the surrounding circumstances².

¹ See generally **CIVIL PROCEDURE** vol 11 (2009) PARA 749 et seq.

² *Briggs v Wilson* (1854) 5 De GM & G 12 at 20. It is doubtful whether, if the entry bears a date, that fact is evidence without other proof that it was made at that date: *Briggs v Wilson*; *Glynn v Bank of England* (1750) 2 Ves Sen 38; *Rose v Bryant* (1809) 2 Camp 321; *Gale v Capern* (1834) 1 Ad & El 102; *Smith v Battens* (1834) 1 Mood & R 341 at 343. See also **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 193.

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B. BY AND TO WHOM PAYMENT MAY BE MADE

1197. In general.

The persons who may make an effective part payment in particular cases have been previously mentioned¹. A payment may be made by the agent of the person by whom it is required to be made, and must be made to the person, or an agent of the person, in respect of whose claim the payment is being made².

¹ See the Limitation Act 1980 s 29; and PARA 1182.

² Limitation Act 1980 s 30(2); and see *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All ER (Comm) 422, [2004] All ER (D) 205 (May). See also *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd* [1980] Ch 146, [1978] 3 All ER 668; and PARA 1185.

As to payments to a person on the claimant's account see *Worthington v Grimsditch* (1845) 7 QB 479; *Edwards v Janes* (1855) 1 K & J 534; *Stamford, Spalding and Boston Banking Co v Smith* [1892] 1 QB 765 at 770, CA; and *Hart v Stephens* (1845) 6 QB 937.

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1198. Payment by agent or receiver.

Although payment by an agent has the same effect as payment by the principal¹, it is a question of fact whether the person making the payment was an agent for that purpose².

A receiver of mortgaged property appointed under the Law of Property Act 1925³ is the mortgagor's agent⁴, and a payment by that receiver of the net rents of the property takes the mortgage debt out of the effect of the limitation period⁵, but in the absence of express authority he has no power to make a part payment in respect of any debts other than those which he is by that Act directed to defray⁶, and no part payment by him in respect of any such other debt would avail to take the rest of the debt out of the effect of the limitation period⁷.

If in a suit for partnership accounts a receiver is appointed and makes payments to one of the partners on account of a debt due to him from another of the partners under a covenant in a partnership deed, and those payments are not authorised by the terms of the receiver's appointment and not proved to be sanctioned by the partner who owes the debt, the receiver is not the debtor's agent for the purpose of making the payments⁸.

Payments made for the maintenance of a mentally disordered person in a hospital by his receiver who is authorised to apply income for that purpose prevent a claim for arrears of maintenance being barred⁹.

Mortgage interest paid by the Benefits Agency to the lender may constitute payment of interest by an agent of the borrower which can revive a claim which might otherwise be barred by the Limitation Act 1980 even if the payment is not directly authorised by the borrower, since the Agency is acting as agent for the borrower within the statutory framework¹⁰.

1 See PARA 1197.

2 *Rew v Pettet* (1834) 1 Ad & El 196; *Jones v Hughes* (1850) 5 Exch 104; and see *Newbould v Smith* (1885) 29 ChD 882 (affd (1889) 14 App Cas 423, HL); *Re Wolmershausen* (1890) 62 LT 541; *Thorne v Heard* [1893] 3 Ch 530 (affd [1895] AC 495, HL); *Harding v Edgecumbe* (1859) 28 LJ Ex 313; *Re Beavan, Davies, Banks & Co v Beavan* [1912] 1 Ch 196 at 204.

3 See the Law of Property Act 1925 ss 101, 109; and **MORTGAGE** vol 77 (2010) PARA 476 et seq.

4 If a receiver is disqualified for appointment as such, with the result that his purported appointment is a nullity, payments made by his directions are not made by the mortgagor's agent: *Portman Building Society v Gallwey* [1955] 1 All ER 227, [1955] 1 WLR 96.

5 *Berwick & Co v Price* [1905] 1 Ch 632 at 642; and see *Chinnery v Evans* (1864) 11 HL Cas 115, where payment by a receiver appointed under an Irish Act was held to be payment by the mortgagor's agent.

6 *Ie* under the Law of Property Act 1925 s 109(8): see **MORTGAGE** vol 77 (2010) PARA 483.

7 See *Re Hale, Lilley v Foad* [1899] 2 Ch 107, CA; and *Hibernian Bank v Yourell (No 2)* [1919] 1 IR 310.

8 *Whitley v Lowe* (1858) 25 Beav 421 (affd 2 De G & J 704). The result would have been different if the receiver had been authorised by the court: see *Re Hale, Lilley v Foad* [1899] 2 Ch 107, CA; and PARA 1209.

9 *Wandsworth Union v Worthington* [1906] 1 KB 420 (a case decided under the former poor law system).

10 *Bradford and Bingley plc v Cutler* (2008) Times, 22 February, CA.

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1199. Constructive payment.

Where the hand to pay and the hand to receive are one and the same, time does not run¹. Where the person entitled to the interest on money charged on land is also entitled to the income of the land, payment of the interest will be presumed and time will not run²; but the fact that a mortgagee of land was himself the owner of an undivided portion of the mortgaged land did not before 1926 give rise to such constructive payment of interest as to prevent time from running in favour of the owner of the remaining portion³.

1 *Hodgson v Salt* [1936] 1 All ER 95 at 98 (first and second mortgages vested in trustees; one common trustee; possession of mortgaged property by first mortgagees; time did not run against second mortgagees).

2 *Burrell v Earl Egremont* (1844) 7 Beav 205; *Topham v Booth* (1887) 35 ChD 607; *Re Hawes, Re Burchell, Burchell v Hawes* (1892) 62 LJ Ch 463 (where the principle was applied to a married woman entitled to a charge on land of her husband); and see *Re Welch, Mitchell v Willders* [1916] 1 Ch 375; and PARA 1202.

3 *Re Finnegan's Estate* [1906] 1 IR 370; *Re England, Steward v England* [1895] 2 Ch 820, CA; *Re Allen, Bassett v Allen* [1898] 2 Ch 499. As from 1 January 1926 a legal estate has not been able to subsist in an undivided share in land: see the Law of Property Act 1925 s 34; and **REAL PROPERTY**. As to the restriction on the creation of settlements and entailed interests subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022, 1101.

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1200. Payments sufficient to preserve mortgagee's rights of action.

The statutory provisions as to the persons who may make an effective part payment in respect of a mortgage debt have been discussed earlier in this title¹. The payment must be made to the person entitled to receive it as mortgagee or his agent². If a mortgagee of a contingent reversionary interest in land and of a policy of insurance receives from the insurance office the surrender value of the policy, this is not, for the purpose of a claim by the mortgagee upon the mortgagor's personal covenant, a payment by a person liable or accountable³ for the mortgage debt⁴; but the payment by trustees of premiums on a policy, the proceeds of which are to be held for the benefit of creditors who were parties to the trust deed, may be a sufficient payment to the creditors to take the debt and interest out of the effect of the limitation period⁵.

If a mortgagee enters into possession and receives the rent of mortgaged real estate, the payment of rent by the tenant is not a payment in respect of the mortgage debt⁶; but payment of the net rents to the mortgagee by a receiver of mortgaged property appointed by the mortgagee under the statutory powers is sufficient to take the debt out of the effect of the limitation period⁷.

Payments made by a person who under the terms of a mortgage contract is entitled to make a tender, and from whom the mortgagee is bound to accept a tender, for the defeasance or redemption of the mortgage⁸, and payment of interest by a person who, as between himself and the mortgagor, is bound to pay it, although he is under no contract with the mortgagee to do so⁹, are payments sufficient to prevent time from running.

Where the property is vested in trustees who receive and accumulate the rents, and a beneficiary under the trust mortgages his interest in the property but nothing is paid by the mortgagor to the mortgagee, the mortgagee is barred after 12 years¹⁰. The effect of payment after a mortgagee's title to mortgaged land has become barred has already been discussed¹¹, and the effect of payment by one of several mortgagors or by an owner for the time being of part of the mortgaged property¹², and the effect of payment by a mortgagor in a case where some person is in adverse possession against time¹³ are considered below¹⁴.

1 See the Limitation Act 1980 s 29(1) (claims to recover land and foreclosure claims in respect of personalty); s 29(5), (6) (claims to recover debts); s 30(2) (payments by agents); and PARAS 1182, 1184, 1197.

2 See the Limitation Act 1980 s 30(2); *Barclay v Owen* (1889) 60 LT 220; and *Purnell v Roche* [1927] 2 Ch 142 (where the question of the validity of a payment of interest to the husband of the mortgagee who was a person of unsound mind was argued but not decided).

3 See the Limitation Act 1980 s 29(5); and PARA 1184.

4 See *Re Lord Clifden, Annaly v Agar-Ellis* [1900] 1 Ch 774, not following *Re Conlan's Estate* (1892) 29 LR Ir 199; *Staley v Barrett* (1856) 26 LJ Ch 321; and *Re Irwin* [1907] 1 IR 357.

5 *Scott v Synge* (1891) 27 LR Ir 560, CA; *Re Greene's Estate* (1884) 13 LR Ir 461, CA.

6 *Cockburn v Edwards* (1881) 18 ChD 449 at 455-456, CA (disapproving dictum in *Brocklehurst v Jessop* (1835) 7 Sim 438); *Harlock v Ashberry* (1882) 19 ChD 539, CA (foreclosure claim); and see *Wrigley v Gill* [1906] 1 Ch 165, CA (redemption claim).

7 See PARA 1198.

8 *Lewin v Wilson* (1886) 11 App Cas 639, PC.

9 *Bradshaw v Widdrington* [1902] 2 Ch 430, CA.

10 *Re Hazeldine's Trusts* [1908] 1 Ch 34, CA. Note that the disapplication of limitation periods under the Limitation Act 1980 in the case of registered land and rentcharges (see PARA 1029) does not apply in relation to a chargee: see the Land Registration Act 2002 s 96(1).

11 See PARA 1181.

12 See PARA 1219.

13 See PARA 1212.

14 See notes 12-13.

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1201. Payment by compulsion of law.

A payment by compulsion of law out of a debtor's property is sufficient to prevent time from running in his favour¹. Thus payment of part of a debt by a sheriff out of the proceeds of an execution levied under a judgment², and part payment made under an order of court out of a fund belonging to the debtor which is in court, are sufficient³. It has, however, been held that part payment of the sum due under a judgment given in a claim on an earlier judgment will not prevent time from running in respect of the original judgment debt⁴.

1 *Brew v Brew* [1899] 2 IR 163; *Cronin v Dennehy* (1869) IR 3 CL 289.

2 *Brew v Brew* [1899] 2 IR 163; and see *Chinnery v Evans* (1864) 11 HL Cas 115 at 125.

3 *Cronin v Dennehy* (1869) IR 3 CL 289 (decided under the Common Law Procedure Amendment Act (Ireland) 1853 s 23). It seems that this decision may possibly be good law in relation to the Limitation Act 1980 ss 30, 31. Cf *Thwaites v M'Donough* (1839) 2 I Eq R 97 (payment under consent order insufficient where defendants were minors).

4 *Taylor v Hollard* [1902] 1 KB 676; and see *Harlock v Ashberry* (1882) 19 ChD 539 at 548, CA, per Lord Esher MR. In so far as the decision in *Taylor v Hollard* was based on the principle that a part payment was insufficient unless a new promise to pay could be inferred, it cannot be regarded as authoritative: see PARA 1194.

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1202. Payment to beneficiary.

A beneficiary is, it seems, considered to be the trustee's agent for the purpose of receiving payment¹. If trust money is lent to the person who is entitled to receive the interest of the fund, he must be treated as having paid himself so as to prevent time running in his favour while he is so entitled². No such implication, however, can arise where a person covenants to transfer a sum of stock or to pay a sum of money to trustees on trust to pay the settlor the interest for his life and no stock is transferred nor money paid; in that case the trust fund never comes into existence, and the settlor cannot be supposed to have received the interest³.

1 *Megginson v Harper* (1834) 2 Cr & M 322; *Gleadow v Atkin* (1833) 1 Cr & M 410.

2 *Re Dixon, Heynes v Dixon* [1899] 2 Ch 561 (affd [1900] 2 Ch 561, CA); *Re England, Steward v England* [1895] 2 Ch 820, CA; *Re Hawes, Re Burchell, Burchell v Hawes* (1892) 62 LJ Ch 463; *Topham v Booth* (1887) 35 ChD 607; *Mills v Borthwick* (1865) 35 LJ Ch 31; *Re Keays' Estate* (1869) 3 IR Eq 659; *Burrell v Earl Egremont* (1844) 7 Beav 205; and cf *Re Welch, Mitchell v Willders* [1916] 1 Ch 375.

3 *Spickernell v Hotham* (1854) Kay 669 at 675; *Stone v Stone* (1869) 5 Ch App 74.

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1203. Payment to stranger.

Part payment to a stranger is of no effect. Thus, where the maker of a promissory note which has been transferred by indorsement makes a payment to the original holder in ignorance of the indorsement, the payment is of no avail, in a claim by the indorsees, to take the debt out of the effect of the limitation period¹. If, however, a payment is made to a person who is wrongly believed by the paying debtor to act in a representative capacity, as, for example, the administrator of an intestate, the payment inures for the benefit of the estate supposed by the debtor to be represented by the payee².

¹ *Stamford, Spalding and Boston Banking Co v Smith* [1892] 1 QB 765 at 770, CA.

² *Clark v Hooper* (1834) 10 Bing 480; *Bodger v Arch* (1854) 10 Exch 333; and see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 36.

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C. WHAT AMOUNTS TO PART PAYMENT

1204. Nature of the payment.

Any transaction which would support a plea of payment¹ will, it seems, constitute payment for the purpose of postponing the period of limitation if the formal requirements set out in the Limitation Act 1980² are satisfied³. The existence of an agreement for the making of part payment, otherwise than by the actual payment of money by the debtor to the creditor, is a question of fact, and may be proved by implication or course of dealing or subsequent ratification as well as by express agreement⁴. The delivery of goods to a creditor⁵ or his agent⁶, the maintenance of the creditor's child (which is, in fact, the supply of goods to the child on his parent's behalf)⁷, and permitting the creditor to live rent free in premises belonging to the debtor⁸, have all been held sufficient. Where there are debts due on both sides, and the accounts are gone through by the parties and a balance struck, this in effect constitutes a new agreement upon which the person in whose favour a balance is shown may sue even though some of the items shown in his favour may be statute-barred⁹. It is the striking of the balance that constitutes the new agreement; the mere existence or even statement in writing of cross demands is not, in a case where no balance is struck, equivalent to part payment¹⁰.

The acceptance by the debtor of a bill drawn upon him by a creditor, or the delivery to the creditor of a bill drawn by the debtor on a third person, on account of part of the debt, is also, it seems, sufficient part payment, whether the bill is paid at maturity or not; in that case the part payment is deemed to be made at the time of the delivery of the bill, and not when it is paid¹¹.

A part payment may be sufficient if it is made by the creditor to himself by agreement with the debtor, out of the debtor's funds in the creditor's hands¹².

1 As to the meaning of 'payment' in this respect see **CONTRACT** vol 9(1) (Reissue) PARAS 942-960.

2 Eg the formal requirements of the Limitation Act 1980 s 30(2); see PARA 1185.

3 See *Maber v Maber* (1867) LR 2 Exch 153 at 155. The principle of the decision in *Maber v Maber* is independent of the former cases as to an agreement or promise to pay (see at 156) and would seem, therefore, to be authority for the purposes of the Limitation Act 1980 s 29(1), (2), (3) (see PARA 1182). In *Maber v Maber* no money passed but the majority of the court held that the transactions constituted payment by the person by whom a statute-barred debt had been payable and took the case out of the effect of the Limitation Act 1623 (repealed).

4 See *Worthington v Grimsditch* (1845) 7 QB 479; *Beamish v Whitney* [1908] 1 IR 38; and *Hamilton v Martin* (1911) 45 ILT 140.

5 *Moore v Strong* (1835) 1 Bing NC 441 at 442; *Hooper v Stephens* (1835) 4 Ad & El 71; *Hart v Nash* (1835) 2 Cr M & R 337; *Collinson v Margesson* (1858) 27 LJ Ex 305.

6 *Pearce v Selby* (1842) 6 Jur 896.

7 *Bodger v Arch* (1854) 10 Exch 333; *Doe d Roylance v Lightfoot* (1841) 8 M & W 553 at 560; *Amos v Smith* (1862) 1 H & C 238.

8 *Re Wilson, ex p Wilson v Trustee of Deed of Arrangement* [1937] Ch 675, [1937] 3 All ER 297, 917n, DC, where the creditor was also supplied free with farm produce.

9 See eg *Yates v Gardiner* (1851) 20 LJ Ex 327. As to the effect of a statement of account where all the items are on one side only see PARA 1188.

10 *Williams v Griffiths* (1835) 2 Cr M & R 45; *Cottam v Partridge* (1842) 4 Man & G 271; *Scholey v Walton* (1844) 12 M & W 510.

11 See *Gowan v Forster* (1832) 3 B & Ad 507; *Irving v Veitch* (1837) 3 M & W 90; *Turney v Dodwell* (1854) 3 E & B 136; *Sparkes v Restal* (1856) 22 Beav 587; and *Re Seaber, ex p Peachy* (1836) 1 Deac 551. It seems that the effect is the same if a cheque is given on one day and not paid until a later day, even though there is an agreement that the cheque should not be presented until the later date: *Marreco v Richardson* [1908] 2 KB 584, CA. In so far as these cases relate to a promise to pay they should be regarded with caution: see PARA 1194.

12 *Stewart v Connick* (1871) IR 5 CL 562; *Re Hawkins, Hawkins v Hawkins* (1879) 28 WR 240.

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1205. Payment in respect of debt or claim.

The payment must be 'in respect of' the debt or claim¹. The debtor's express declarations at the time of the payment are conclusive, but assertions made by him subsequent to the payment are not².

The nature of a payment may be inferred from the nature of similar payments made at other times³; and, although the claimant must in all cases give some evidence that the payment relied on was made in respect of some debt, the circumstances attending the payment, even without any direct evidence, may be such as to render it improbable that the payment could be made for any other purpose⁴. When it is once established that the payment was made in respect of some debt and that no other debt than the one sued for then existed, the inference may be drawn that the payment was in respect of the debt sued for⁵. If more debts than one are due, and a payment is made which is not specifically appropriated, it is a question of fact in respect of which debt the payment was made⁶.

1 See the Limitation Act 1980 s 29(3)-(6); and PARAS 1182-1184. See also *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All ER (Comm) 422, [2004] All ER (D) 205 (May); *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 2 All ER 481, [1977] 1 WLR 565 (defendant admitted and paid part only of debt; held not part payment for purposes of limitation extension as payment not made in respect of whole claim but in respect of undisputed balance); *Holme v Green* (1816) 1 Stark 488; *Tippets v Heane* (1834) 1 Cr M & R 252; *Burkitt v Blanshard* (1848) 3 Exch 89; *Re Oliver, Theobald v Oliver* [1927] 2 Ch 323 at 331. See also *Re Footman Bower & Co Ltd* [1961] Ch 443, [1961] 2 All ER 161, where it was held that payments generally on account of the balance outstanding on a current account due at the date of the payments were payments on account of the whole balance outstanding at the date of the payments, and therefore each was 'in respect of' that balance for the purposes of the Limitation Act 1980 s 29(5), (6), so that time started to run afresh on the occasion of each payment.

2 *Baildon v Walton* (1847) 1 Exch 617 at 633.

3 *Worthington v Grimsditch* (1845) 7 QB 479.

4 *Burn v Boulton* (1846) 2 CB 476 at 485.

5 *Evans v Davies* (1836) 4 Ad & El 840; *Tippets v Heane* (1834) 1 Cr M & R 252.

6 *Re Rainforth, Gwynn v Gwynn* (1879) 49 LJ Ch 5, CA; *Burn v Boulton* (1846) 2 CB 476. As to appropriation of payments see PARA 1207; and **CONTRACT** vol 9(1) (Reissue) PARAS 956-960, 974.

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1206. Principal and interest.

If a debt properly carries interest, then as a rule principal and interest constitute one demand, so that if the principal is barred the interest is barred also¹, and therefore it seems that payment of principal or of part of it takes the interest also out of the effect of the limitation period². In the case of a debt or liquidated pecuniary claim, a payment of part of the interest due at any time does not extend the period for claiming the remainder then due but is treated as a payment in respect of the principal debt³.

If the payment is shown to have been made as interest, the only question that can in general arise is in respect of what debt it was made. Where a breach of trust has been committed by improper investment on a mortgage, payment by the trustees to the beneficiaries of the interest on the mortgage will not prevent time from running in respect of their liability⁴. Where there is one debt and one or more securities for it, if it is clearly shown that the subject-matter is the same, a payment of interest on the whole sum may, it seems, take the debt and all the securities out of the effect of the limitation period⁵.

1 See *Cheang Thye Phin v Lam Kin Sang* [1929] AC 670, PC; *Elder v Northcott* [1930] 2 Ch 422.

2 The decision in *Collyer v Willock* (1827) 4 Bing 313 to the contrary seems no longer good authority as it was based on the absence of any promise to pay the interest: see PARA 1194.

3 Limitation Act 1980 s 29(6); and see PARA 1184.

4 *Re Somerset, Somerset v Earl Poulett* [1894] 1 Ch 231, CA. See also *Re Fountaine, Re Dowler, Fountaine v Lord Amherst* [1909] 2 Ch 382, CA; and *Sims v Brutton* (1850) 5 Exch 802.

5 *Dowling v Ford* (1843) 11 M & W 329. *Brandram v Wharton* (1818) 1 B & Ald 463, so far as it is inconsistent with *Dowling v Ford*, must be considered overruled.

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1207. Appropriation.

If more than one debt is shown to have been due at the time of the payment, the payment is only effective to prevent time from running if made on account of all the debts or if appropriated by the debtor to any one or more of the debts¹. This appropriation need not be proved by any express declaration of the debtor at the time of payment, but any expressions used by him either before or after that time, or any other circumstances from which it may be inferred that the payment was intended to be appropriated to any particular debt or debts or was made on account of all collectively, will be sufficient for this purpose². In the absence of any evidence, no inference may be drawn that the payment was made either on account of any particular debts or on account of all³.

If at the time when the payment was made some of the debts were statute-barred and some were not, then, in the absence of any other evidence, the payment may be attributed only to those debts which were not barred⁴.

If the debtor makes no appropriation at the time of payment, the creditor may appropriate the payment to any of the debts⁵, but that appropriation cannot operate as a part payment so as to take a debt out of the effect of the limitation period⁶. The rule that in the absence of appropriation by the debtor or the creditor a payment is presumed to be in discharge of the earliest of several debts⁷ has no operation as regards the taking of that debt out of the effect of the limitation period⁸.

1 *Wycombe Union Guardians v Eton Union Guardians* (1857) 1 H & N 687; *Re Rainforth, Gwynn v Gwynn* (1879) 49 LJ Ch 5, CA. Where there are two separate debts under one instrument, payment of one will not amount to a part payment in relation to the other: *Ashlin v Lee* (1875) 44 LJ Ch 376.

2 *Waters v Tompkins* (1835) 2 Cr M & R 723 at 726; *Walker v Butler* (1856) 6 E & B 506; *Bevan v Gething* (1842) 3 QB 740; *Dixon v Holdroyd* (1857) 7 E & B 903; and see *Re Rainforth, Gwynn v Gwynn* (1879) 49 LJ Ch 5, CA.

3 *Burn v Boulton* (1846) 2 CB 476 at 485 per Tindal CJ.

4 *Mills v Fowkes* (1839) 5 Bing NC 455; *Nash v Hodgson* (1855) 6 De GM & G 474; *Re Boswell, Merritt v Boswell* [1906] 2 Ch 359 at 366 (settled on appeal [1907] 2 Ch 331, CA).

5 See **CONTRACT** vol 9(1) (Reissue) PARAS 956-957.

6 See *Re Boswell, Merritt v Boswell* [1906] 2 Ch 359 at 366; *Re McHenry, McDermott v Boyd Barker's Claim* (1894) 71 LT 146, CA; *Waller v Lacy* (1840) 1 Man & G 54; *Smith v Betty* [1903] 2 KB 317, CA; *Eyre v Coen* (1898) 33 ILT 59; *Hibernian Bank v Yourell (No 2)* [1919] 1 IR 310; and **CONTRACT** vol 9(1) (Reissue) PARAS 956-960.

7 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 865; and **CONTRACT** vol 9(1) (Reissue) PARA 958.

8 See the cases cited in note 4.

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1208. Payment under or on eve of bankruptcy.

It seems that a payment of a dividend on a debt made in bankruptcy or under a deed of arrangement is not such a part payment as to prevent time from running in the debtor's favour¹. A payment made with the object of reviving a statute-barred genuine debt is not a fraudulent preference of the creditor for purposes of bankruptcy².

1 See **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 502. Time does not usually run during bankruptcy: see PARA 936.

2 *Re Lane, ex p Gaze* (1889) 23 QBD 74 at 77 per Cave J.

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1209. Partners.

As long as a partnership exists, one partner, in making payments in respect of partnership debts, may be presumed to do so as the firm's agent and therefore to bind the firm¹. On the dissolution of partnership by death or otherwise, however, the agency determines, and therefore no payments made after that time can in general affect any other person than the one who makes them², except in the case of a secret retirement³.

¹ *Griffiths v Hicks* (1850) 15 LTOS 349; *Goodwin v Parton and Page* (1879) 41 LT 91 (affd (1880) 42 LT 568, CA).

² *Thompson v Waithman* (1856) 3 Drew 628; *Bristow v Miller* (1848) 11 ILR 461; *Watson v Woodman* (1875) LR 20 Eq 721.

³ *Re Tucker, Tucker v Tucker* [1894] 3 Ch 429, CA; cf *Friend v Young* [1897] 2 Ch 421.

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(iv) Effect on Persons other than the Maker or Recipient

1210. Acknowledgments of title to unregistered land or mortgaged personalty.

An acknowledgment of the title to any unregistered land¹, benefice or mortgaged personalty by any person in possession² of it binds all other persons in possession during the ensuing period of limitation³.

An acknowledgment of a first mortgagee's title by the mortgagor does not, however, bind a later incumbrancer who is not in possession and is not a party to the acknowledgment⁴.

1 As to the meaning of 'land' see PARA 1018.

2 As to the meaning of 'possession' in relation to rentcharges see PARA 1072.

3 Limitation Act 1980 s 31(1). Note that limitation periods under the 1980 Act are disapplied in relation to registered land, and hence ss 29-31 are of no application: see PARAS 1017, 1029.

4 *Bolding v Lane* (1863) 1 De GJ & Sm 122; *Chinnery v Evans* (1864) 11 HL Cas 115 at 135; *Lewin v Wilson* (1886) 11 App Cas 639 at 645, PC; *Astbury v Astbury* [1898] 2 Ch 111 at 116, 117. The actual decision in *Bolding v Lane* (that in a foreclosure claim by the first mortgagee of land a later incumbrancer could redeem on payment of principal and six years' arrears of interest only) is no longer of authority, as the provision by which, in the absence of any acknowledgment, a mortgagee is entitled to recover only six years' arrears of interest does not now apply to a foreclosure claim (see PARA 1128) and it has been held to be inapplicable to redemption proceedings, at least in a case where it is the mortgagor who is seeking to redeem (see PARA 1137).

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1211. Payment in respect of mortgage debt.

A payment in respect of a mortgage debt by the mortgagor or any other person liable for the debt or any person in possession of the mortgaged property, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, binds all other persons in possession of the mortgaged property during the ensuing period of limitation¹.

¹ Limitation Act 1980 s 31(2). For general provisions concerning the effect of such acknowledgment see s 29(1), (3); and PARA 1182.

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1212. Effect of possession adverse to mortgagor.

The statutory provision by which a payment in respect of a mortgage debt is binding on all persons in possession of the mortgaged property¹ applies even though the possession of the person in question is adverse to the mortgagor, provided that his possession was not adverse to the mortgagor at the time of the mortgage², or that persons in possession had not at the time of the mortgage gained a good title under the statute of limitation as against the mortgagor³. If, therefore, at the date of the mortgage a person is in possession by permission of the mortgagor and not adversely to him, then, although time may have begun to run against the mortgagor, if he pays interest or a part of the mortgage debt to the mortgagee that payment confers a new right of entry on the mortgagee, and, so long as that payment is made, time will not run against his right, although time will continue to run against the mortgagor's right⁴. In that case, at the expiration of the statutory period, the mortgagor's equity of redemption will be barred if the land is unregistered⁵, but, it seems, the person so in possession will have a right to redeem the mortgage⁶. If, however, at the date of the mortgage a person is in possession adversely to the mortgagor, the payment of interest or of part of the mortgage debt will not preserve the mortgagee's right as against the person so in possession⁷.

1 I.e. the Limitation Act 1980 s 31(2); see PARA 1211.

2 *Doe d Palmer v Eyre* (1851) 17 QB 366; *Ford v Ager* (1863) 2 H & C 279; *Doe d Baddeley v Massey* (1851) 17 QB 373; *Eyre v Walsh* (1860) 10 ICLR 346; *Ludbrook v Ludbrook* [1901] 2 KB 96, CA; *Thornton v France* [1897] 2 QB 143, CA.

3 *Doe d Palmer v Eyre* (1851) 17 QB 366 at 372 per Lord Campbell CJ; *Hemming v Blanton* (1873) 42 LJCP 158.

4 See *Doe d Palmer v Eyre* (1851) 17 QB 366; and cases cited in note 2.

5 No period of limitation applies to a claim for redemption of registered land or a registered rentcharge: see PARAS 1017, 1129.

6 *Fletcher v Bird* (1896) Fisher's Law of Mortgage (6th Edn) 1025.

7 *Thornton v France* [1897] 2 QB 143, CA; *Halpin v Cremin* [1954] IR 19.

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1213. Acknowledgment of mortgagor's title; two mortgagees.

Acknowledgment of the mortgagor's title or equity of redemption made by the mortgagee in possession¹ postpones the limitation period for barring redemption in the case of unregistered land² for 12 years from the date of the acknowledgment³. If two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees only binds him and his successors⁴ and does not bind any other mortgagee or his successors⁵. Where, in such a case, the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor is entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land⁶. Where there are two or more mortgagors, and the title or equity of redemption of one of the mortgagors is acknowledged in the manner described above, the acknowledgment is deemed to have been made to all the mortgagors⁷.

1 As to the meaning of 'possession' in the case of unregistered rentcharges see PARA 1072.

2 No period of limitation applies to a claim for redemption of registered land or a registered rentcharge: see PARAS 1017, 1129.

3 See the Limitation Act 1980 s 29(4); and PARA 1183. As to the persons by and to whom such an acknowledgment may be made see PARA 1185. As to the general principle that an acknowledgment of title to land or mortgaged personalty by a person in possession binds all other persons in possession see PARA 1210.

4 'Successor', in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives, and any other person on whom the rights under the mortgage devolve or, as the case may be, the liability in respect of the debt or claim devolves, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise: Limitation Act 1980 s 31(9).

5 Limitation Act 1980 s 31(3).

6 Limitation Act 1980 s 31(4).

7 Limitation Act 1980 s 31(5).

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1214. Acknowledgment of debt or liquidated pecuniary claim.

An acknowledgment of any debt or other liquidated pecuniary claim binds the acknowledgor and his successors¹ but not any other person².

1 As to the meaning of 'successor' see PARA 1213 note 4.

2 Limitation Act 1980 s 31(6). As to the position with regard to joint obligations see PARA 1217.

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1215. Payment in respect of debt or liquidated pecuniary claim.

A payment made in respect of any debt or other liquidated pecuniary claim binds all persons liable in respect of it¹. The effect of this provision is not limited to co-debtors; its effect is that payments by a principal debtor bind a surety².

¹ Limitation Act 1980 s 31(7). A payment by a partner binds the firm: see PARA 1209. As to the position with regard to other joint obligations see PARA 1217.

² *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All ER (Comm) 422, [2004] All ER (D) 205 (May).

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1216. Acknowledgment by personal representatives.

An acknowledgment by one of several personal representatives of any claim to a deceased person's personal estate, or to any share or interest in it, or a payment by one of several personal representatives in respect of any such claim, binds the deceased person's estate¹.

¹ Limitation Act 1980 s 31(8). After the death of the personal representative who has made the acknowledgment, an order may be made for the payment of the debt in respect of which the acknowledgment was given out of assets remaining unadministered in the hands or under the control of the surviving personal representatives: *Re Macdonald, Dick v Fraser* [1897] 2 Ch 181. It seems that where real estate is vested in a personal representative, as personal representative of the deceased debtor, a payment by him will keep the debt alive against the real estate, but that after he has, as personal representative, divested himself of the real estate, a payment by him will not keep the debt alive as against the devisee: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 395. A testator's real and personal estate are assets for the payment of his debts: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 387. If, however, the personal representative is also beneficial devisee, a payment by him binds both the personal estate and the land devised to him: *Fordham v Wallis* (1853) 10 Hare 217; *Putnam v Bates* (1826) 3 Russ 188. A payment by the devisee of the real estate of a deceased debtor or part of it, in respect of a specialty or simple contract debt of his testator, keeps the creditor's right alive as against all persons interested in the real estate: *Roddam v Morley* (1857) 1 De G & J 1; *Re Hollingshead, Hollingshead v Webster* (1888) 37 ChD 651; *Re Chant, Bird v Godfrey* [1905] 2 Ch 225; *Read v Price* [1909] 2 KB 724 at 732, 734, CA; and see *Re Lacey, Howard v Lightfoot* [1907] 1 Ch 330, CA; and PARA 1219.

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1217. Joint obligations.

Where there is a joint obligation, part payment by one joint debtor normally binds all persons liable in respect of the debt¹, while an acknowledgment only binds the person making the acknowledgment and his successors².

The principle that a payment by one partner binds the others has been previously mentioned³.

As a guarantor is a person liable in respect of the debt which he has guaranteed, the payment of interest by the principal debtor makes the cause of action accrue afresh against the guarantor⁴; and payment of interest by a guarantor makes the cause of action accrue afresh against the principal debtor⁵.

A payment by one of two mortgagors who covenant jointly and severally to pay the mortgage debt prevents time from running in favour of the other mortgagor⁶.

Payments by a mortgagor who is still liable on his personal covenant or agreement to pay⁷, or by a person bound as between himself and the mortgagor to pay⁸, prevent time running in favour of a transferee of the equity of redemption⁹.

1 See the Limitation Act 1980 s 31(7); and PARA 1215. See also *UCB Corporate Services Ltd v Kohli* [2004] EWHC 1126 (Ch), [2004] 2 All ER (Comm) 422, [2004] All ER (D) 205 (May) (payment by principal binds a surety).

2 See the Limitation Act 1980 s 31(6); and PARA 1214.

3 See PARA 1209.

4 See *Re Powers, Lindsell v Phillips* (1885) 30 ChD 291, CA; *Re Frisby, Allison v Frisby* (1889) 43 ChD 106, CA; *Lewin v Wilson* (1886) 11 App Cas 639, PC; the Limitation Act 1980 s 31(7); and PARA 1215. The period of limitation applicable to a claim against a guarantor may differ from that applicable to the claim against the principal debtor eg where the guarantee is under hand and the principal debtor's liability arises on a specialty: see *Re Powers, Lindsell v Phillips*. The date from which time runs against a guarantor may also differ from the date from which time runs against the principal debtor: see PARA 977.

5 *Re Seager's Estate, Seager v Aston* (1857) 26 LJ Ch 809.

6 *Bailie v Irwin* [1897] 2 IR 614; *Re Earl of Kingston's Estate* (1869) 3 IR Eq 485 (payment of interest on one of several judgments obtained against persons jointly and severally liable prevented right of action on another of the judgments being barred).

7 *Chinnery v Evans* (1864) 11 HL Cas 115.

8 *Bradshaw v Widdrington* [1902] 2 Ch 430, CA; *Cann v Taylor* (1859) 1 F & F 651.

9 See the Limitation Act 1980 ss 29(5), (6), 31(7); and PARAS 1184, 1215. *Newbould v Smith* (1886) 33 ChD 127, CA, to the contrary, was a case in which the claim on the agreement to pay was barred before the mortgagor's payment.

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1218. Contractor personal representative of deceased co-contractor.

If one co-contractor becomes the personal representative of a deceased co-contractor and makes payments in respect of a debt, the capacity in which the payments are made is a question of fact; and it seems that prima facie those payments must be considered as made in the capacity of surviving co-contractor and not that of personal representative¹.

¹ *Atkins v Tredgold* (1823) 2 B & C 23; *Braithwaite v Britain* (1836) 1 Keen 206 at 221; *Scholey v Walton* (1844) 12 M & W 510; *Way v Bassett* (1845) 5 Hare 55; *Fordham v Wallis* (1853) 10 Hare 217; *Brown v Gordon* (1852) 16 Beav 302; *Thompson v Waithman* (1856) 3 Drew 628; *Winter v Innes* (1838) 4 My & Cr 101; cf *Griffin v Ashby* (1845) 2 Car & Kir 139.

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1219. Payment by owner of part of property or limited owner.

If several estates are comprised in one mortgage, a payment on account of the debt out of the rents of one of them would seem to keep the security alive against the others, even if they have passed into the hands of purchasers for value in good faith¹.

The same principle applies where the fee simple of a single estate after being mortgaged is divided into particular interests and a payment or acknowledgment is made by the owner of one particular interest, or where a devisee of part of a testator's land, or a person having a partial interest in that land or part of it, makes a payment or acknowledgment in respect of a debt of the testator, even though the debt is not expressly charged on the land. Thus, payment of interest on a mortgage debt by a devisee of the mortgaged land keeps alive the mortgagee's right to resort to the residuary personal estate or the other real estate of the testator in the event of the security of the mortgaged land proving insufficient²; and, if the tenant for life of the testator's real estate or of part of it makes a payment on account of a debt of the testator, the payment will keep the debt alive as against the persons interested in remainder³.

1 *Chinnery v Evans* (1864) 11 HL Cas 115 (payment made by receiver appointed over several estates, but who entered into possession of one estate only). See also *Homan v Andrews* (1850) 11 Ch R 106 (person making payment liable to indemnify owner of other estate against the charge, held to have paid as that owner's agent); *Re Muskerry and Chinnery* (1858) 9 I Ch R 94, CA; *Re Greene's Estate* (1884) 13 LR Ir 461, CA; and *Re Power's Estate* [1913] 1 IR 530 (payment not made to person entitled to it; therefore inoperative to keep claim alive). As to mortgages generally see **MORTGAGE** vol 77 (2010) PARA 101 et seq.

2 *Re Lacey, Howard v Lightfoot* [1907] 1 Ch 330, CA; *Leahy v De Moleyns* [1896] 1 IR 206, CA. The decision in *Dickenson v Teasdale* (1862) 1 De GJ & Sm 52 to the contrary effect cannot now be regarded as authority on this point: see *Re Lacey, Howard v Lightfoot*.

3 *Pears v Laing* (1871) LR 12 Eq 41; *Roddam v Morley* (1857) 1 De G & J 1. See also *Re Hollingshead, Hollingshead v Webster* (1888) 37 ChD 651; *Re Chant, Bird v Godfrey* [1905] 2 Ch 225; *Barclay v Owen* (1889) 60 LT 220; *Chinnery v Evans* (1864) 11 HL Cas 115; *Dibb v Walker* [1893] 2 Ch 429; and *Ames v Mannering* (1859) 26 Beav 583. If a mortgagee or the person entitled to the interest on a mortgage debt is a tenant for life of the mortgaged land, time will not run during his life: *Wynne v Styan* (1847) 2 Ph 303; *Corbett v Barker* (1796) 3 Anst 755; *Topham v Booth* (1887) 35 ChD 607; *Re Finnegan's Estate* [1906] 1 IR 370; *Re Hawes, Re Burchell, Burchell v Hawes* (1892) 62 LJ Ch 463; and see PARA 1199. As to the restriction on the creation of settlements and entailed interests and the position in relation to trusts of land subsequent to 1 January 1997 pursuant to the Trusts of Land and Appointment of Trustees Act 1996 see PARAS 1022-926, 1101.

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(4) FRAUD, DELIBERATE CONCEALMENT OR MISTAKE

(i) In general

1220. Postponement of the limitation period.

Where in the case of any claim¹ for which a period of limitation is prescribed by the Limitation Act 1980², either:

- 146 (1) the claim is based upon the fraud of the defendant; or
- 147 (2) any fact relevant to the claimant's right of action³ has been deliberately concealed from him by the defendant; or
- 148 (3) the claim is for relief from the consequences of a mistake⁴,

the period of limitation does not begin to run until the claimant has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it⁵. Hence the period of limitation in these instances is postponed. These provisions cannot, however, operate so as to postpone the overriding time limit of ten years placed by the Limitation Act 1980⁶ upon claims in respect of defective products⁷.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 Ie any period of limitation prescribed pursuant to the Limitation Act 1980 Pt I (ss 1-27B): see PARA 952 et seq.

3 The recovery of interest by way of execution on a judgment is not a 'right of action' for these purposes: *Lowsley v Forbes (t/a L E Design Services)* [1999] 1 AC 329, [1998] 3 All ER 897, HL.

4 Sums paid under a mistake of law are generally recoverable (see **MISTAKE** vol 77 (2010) PARA 11), and it has been held that such a mistake falls within the scope of the Limitation Act 1980 s 32(1): *Kleinwort Benson Ltd v Lincoln City Council*, *Kleinwort Benson Ltd v Birmingham City Council*, *Kleinwort Benson Ltd v Southwark London Borough Council*, *Kleinwort Benson Ltd v Kensington and Chelsea Royal London Borough Council* [1999] 2 AC 349, [1998] 4 All ER 513, HL. See also *Brennan v Bolt Burdon (a firm)* [2004] EWCA Civ 1017, [2005] QB 303, [2004] All ER (D) 551 (Jul). As to the disapplication of head (3) in the text with respect to certain claims for relief from a mistake of law relating to tax see PARA 1231.

5 Limitation Act 1980 s 32(1) (amended by the Consumer Protection Act 1987 Sch 1 para 5). This provision is subject to the Limitation Act 1980 s 32(3), (4A): see the text and note 7; and PARA 1222. Much of the case law decided under the previous legislation remains applicable: see PARAS 1221-1230.

The adoption of precautions by a mortgagee to ensure protection against future losses for mortgage fraud infers a constructive knowledge of past frauds which were not so protected: *Abbey National plc v Sayer* (1999) Times, 30 August.

6 Ie the Limitation Act 1980 s 11A(3), s 12(1) (applying s 11A(3)): see PARAS 1000, 1003.

7 Limitation Act 1980 s 32(4A) (added by the Consumer Protection Act 1987 Sch 1 para 5).

UPDATE

1220 Postponement of the limitation period

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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1221. Acts of agents.

In relation to postponement of the limitation period for fraud, deliberate concealment or mistake¹, references to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent². In this context, the concept of 'agent' is wider than the ordinarily accepted meaning of the term³ and should not be confined to a person who represents the principal in relations with third parties⁴.

A purchaser for value who, although himself ignorant of the fraud, concealment or mistake, contracts through an agent who knows of it will not be able to take advantage of the postponement of limitation⁵.

¹ See PARA 1220.

² See the Limitation Act 1980 s 32(1); and PARA 1220. Lack of diligence on the part of the claimant's agent in discovering the fraud or concealment has been held to justify the normal running of time: see *Gray v TP Bennett & Son* (1987) 43 BLR 63; *William Hill Organisation Ltd v Bernard Sunley & Sons Ltd* (1982) 22 BLR 1, CA; *Lewisham Borough Council v Leslie & Co Ltd* [1979] 1 EGLR 141, CA; cf, however, *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 3 All ER 193 at 202, [1983] 1 WLR 1315 at 1326 per Webster J, where it was stated that the acts or omissions of an agent of the claimant are not to be attributed to the claimant for the purposes of the Limitation Act 1980 s 32 (claimant bought reproduction drawing believing it to be an original; claimant's agent who revalued the drawing also failed to discover this within the limitation period).

Where the auditor of a company paid money which he was permitted to receive on its behalf into his banking account and made payments by cheque out of the money in the account in favour of an innocent third person who did not give value for the payments, the third person was held to claim through the auditor: see *GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532, [1958] 1 WLR 1216 (revsd on other grounds [1958] 3 All ER 540, [1958] 1 WLR 1216, CA). See also *Re McCallum, McCallum v McCallum* [1901] 1 Ch 143, CA (devisee under will held not to be person claiming through testator's wife, even if guilty of concealed fraud in connection with her ownership of her husband's property); *John v Dodwell & Co Ltd* [1918] AC 563 at 574-575, PC; and *Eddis v Chichester Constable* [1969] 2 Ch 345, [1969] 2 All ER 912, CA.

³ See *Applegate v Moss* [1971] 1 QB 406 at 415, [1971] 1 All ER 747 at 752, CA, per Edmund Davies LJ (agent included independent contractor). As to the ordinarily accepted meaning of the concept of 'agent' see **AGENCY** vol 1 (2008) PARA 1.

⁴ See *Eddis v Chichester Constable* [1969] 2 Ch 345, [1969] 2 All ER 912, CA.

⁵ See *Vane v Vane* (1873) 8 Ch App 383; and *Eddis v Chichester Constable* [1969] 2 Ch 345, [1969] 2 All ER 912, CA (innocent principal may be liable for agent's fraud after time has run in conversion). See also *Applegate v Moss* [1971] 1 QB 406, [1971] 1 All ER 747, CA (principal held liable for agent's fraud in building operation); and *Gawthrop v Boulton* [1978] 3 All ER 615, [1979] 1 WLR 268 (joinder of solicitor who was partner at time fraud committed).

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1222. Innocent third parties.

The provisions postponing the limitation period in cases of fraud, deliberate concealment and mistake¹ do not enable any claim:

- 149 (1) to recover, or recover the value of, any property; or
- 150 (2) to enforce any charge against, or set aside any transaction affecting, any property,

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud, the concealment or (as the case may be) the transaction in which the mistake was made took place². A purchaser is an innocent third party in the case of fraud or concealment of any fact relevant to the claimant's right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place³. In the case of mistake a purchaser is an innocent third party for these purposes, if he did not at the time of the purchase know or have reason to believe that the mistake had been made⁴.

1 See the Limitation Act 1980 s 32(1); and PARA 1220.

2 Limitation Act 1980 s 32(3). A purchaser for value who, although himself ignorant of the fraud, contracts through an agent who knows of the fraud may not be protected: see *Vane v Vane* (1873) 8 Ch App 383; and *Eddis v Chichester Constable* [1969] 2 Ch 345, [1969] 2 All ER 912, CA (an innocent principal may be liable for his agent's fraud after time has run in conversion). See also *Applegate v Moss* [1971] 1 QB 406, [1971] 1 All ER 747, CA (principal held liable for agent's fraud in building operation); and *Gawthrop v Boulton* [1978] 3 All ER 615, [1979] 1 WLR 268 (joinder of solicitor who was partner at time fraud committed).

3 Limitation Act 1980 s 32(4)(a). There is authority for saying that where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question: see *Westminster City Council v Croyalgrange Ltd* [1986] 2 All ER 353, [1986] 1 WLR 674, HL; *Knox v Boyd* 1941 JC 82 at 86; *Taylor's Central Garages (Exeter) Ltd v Roper* (1951) 115 JP 445 at 449-450, [1951] WN 383 at 384-385 per Devlin J; and *Mallon v Allon* [1964] 1 QB 385 at 394, [1963] 3 All ER 843 at 847. Yet mere neglect to ascertain what would have been found out by making reasonable inquiries is not tantamount to knowledge: see *Taylor's Central Garages (Exeter) Ltd v Roper*; cf *London Computator Ltd v Seymour* [1944] 2 All ER 11, 109 JP 10; and *Mallon v Allon*. See also *R v Banks* [1916] 2 KB 621, CCA; *R v Harrison* [1938] 3 All ER 134, 159 LT 95; and *Nakkuda Ali v Jayaratne* [1951] AC 66, PC.

4 Limitation Act 1980 s 32(4)(b).

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1223. Diligence in discovery of fraud, deliberate concealment or mistake.

The standard of diligence which the claimant needs to prove¹ is high², except where he is entitled to rely on the other person³; however, the meaning of 'reasonable diligence' varies according to the particular context⁴. In order to prove that a person might have discovered a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; it must be shown that there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts⁵. If, however, a considerable interval of time has elapsed between the alleged fraud, concealment or mistake and its discovery, that of itself may be a reason for inferring that it might with reasonable diligence have been discovered much earlier⁶.

1 le for the purposes of the Limitation Act 1980 s 32(1); see PARA 1220.

2 *Chetham v Hoare* (1870) LR 9 Eq 571; *Lawrance v Lord Norreys* (1890) 15 App Cas 210, HL.

3 *Betjemann v Betjemann* [1895] 2 Ch 474, CA; *Rawlins v Wickham* (1858) 3 De G & J 304 (partners); and see *Kitchen v Royal Air Forces Association* [1958] 2 All ER 241 at 250, [1958] 1 WLR 563 at 573-574, CA (client and solicitor); and *Clark v Woor* [1965] 2 All ER 353, [1965] 1 WLR 650 (defective work concealed by a builder).

4 See *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 3 All ER 193, [1983] 1 WLR 1315 (work of art believed to be valuable, subsequently discovered to be reproduction; 'reasonable diligence' did not mean the doing of everything possible nor necessarily the use of any means at the claimant's disposal nor even necessarily the doing of anything at all, but simply the doing of that which the ordinarily prudent buyer and possessor of a valuable work of art would do having regard to all the circumstances). See also *Barnstaple Boat Co Ltd v Jones* [2007] EWCA Civ 727, [2008] 1 All ER 1124, [2007] All ER (D) 240 (Jul) (claims involving, among other matters, purchase of boat by claimant company relying on oral representation by defendant that it was in working order when in fact the engine did not function; fraud discovered only when claimant's managing director had chance meeting with engineer who had inspected the boat and had been told by the defendant that the boat had been sunk; even if claimant ought to have appreciated that engine did not function, he did not know until the chance meeting with the engineer that the representation made to him was untrue to the knowledge of the defendant; there was no failure to use reasonable diligence and no use of diligence would have brought about the chance meeting earlier). See also *Mallusk Cold Storage Ltd v Department of Finance and Personnel* [2006] NICA 50, decided under the corresponding Northern Ireland legislation (decision not to pursue litigation, the outcome of which was uncertain, to contest rating authority's refusal to treat premises as predominantly industrial did not amount to a failure to use reasonable diligence in discovering that the assessment was mistaken).

5 *Sturgis v Morse* (1857) 24 Beav 541.

6 *Chetham v Hoare* (1870) LR 9 Eq 571; *Lawrance v Lord Norreys* (1890) 15 App Cas 210, HL; *Re Jennens*, *Willis v Earl Howe* (1880) 50 LJ Ch 4; *Willis v Earl Howe* [1893] 2 Ch 545, CA. As to the operation of the equitable doctrine of unconscionable delay ('laches') in cases of fraud see **EQUITY** vol 16(2) (Reissue) PARA 913.

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(ii) Fraud

1224. Nature of fraud for purposes of postponing the limitation period.

Where the claim is based on the fraud of the defendant, the limitation period will be postponed¹. In order for the claimant to succeed under the relevant provision, it must be established that the nature of the underlying cause of action is based on fraud² and that the fraud itself was not discoverable³.

1 See the Limitation Act 1980 s 32(1)(a); and PARA 1220.

2 *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA where it was held that fraud should be an essential element of the claimant's claim if a plea based on the then Limitation Act 1939 s 26 (repealed: see now the Limitation Act 1980 s 32(1)(a)) was to succeed; and see *Barnstaple Boat Co Ltd v Jones* [2007] EWCA Civ 727, [2008] 1 All ER 1124, [2007] All ER (D) 240 (Jul).

3 See *RB Policies at Lloyd's v Butler* [1950] 1 KB 76, [1949] 2 All ER 226 (where the claimant was aware of the fraud, but unaware of the identity of the fraudster; the running of time was not postponed under what is now the Limitation Act 1980 s 32(1)(a)).

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1225. Fraudulent taking of minerals.

If one person takes the minerals of another by means of a wilful and secret underground trespass, and the mineral owner has not shown a lack of reasonable diligence¹ in failing to discover the existence of the wrongful workings, time does not run until the trespass is discovered, and it is not necessary, to prevent the running of time, that there should have been any active measures on the trespasser's part to prevent detection².

1 As to what constitutes reasonable diligence for these purposes see PARA 1223.

2 *Bulli Coal Mining Co v Osborne* [1899] AC 351, PC, applied in *Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA. See also *Dean v Thwaite* (1885) 21 Beav 621 at 623; and *Ecclesiastical Comrs for England v North Eastern Ry Co* (1877) 4 ChD 845. As to the position where a wrongful working of minerals is inadvertent see PARA 993 text and note 3.

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(iii) Deliberate Concealment

1226. Nature of deliberate concealment for purposes of postponing limitation period.

Where in a claim¹ any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant, the period of limitation will be postponed². Deliberate commission of a breach of duty in circumstances where it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty³; but this does not apply where the defendant has been unaware that he has been committing a breach of duty⁴.

However, the concealment of evidence which would support the claimant's claim (as opposed to facts essential to the cause of action) may not amount to deliberate concealment for the purposes of the relevant provision where the claimant is in possession of those essential facts relevant to his cause of action⁵. The mere fact that evidence relevant to the claimant's cause of action has been concealed will not suffice to postpone the running of time: it is necessary to show that there has been deliberate concealment⁶.

Under the former legislation, the running of time was postponed where the claimant's cause of action had been concealed by the fraud of the defendant (fraudulent concealment)⁷. That provision was given a wide interpretation by the courts⁸, and it would appear that that case law remains authoritative for the purposes of the Limitation Act 1980⁹.

Leave to amend proceedings to add a cause of action for intentional breach of fiduciary duty and/or trust may be given after the expiry of the limitation period where deliberate concealment is alleged and the deliberateness of the breach is an essential element of the new cause of action¹⁰.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 See the Limitation Act 1980 s 32(1)(b); and PARA 1220. The Limitation Act 1980 s 32(1)(b) operates to postpone the running of time, regardless of whether the concealment in question was contemporaneous with or subsequent to the accrual of the cause of action: *Sheldon v RHM Outhwaite (Underwriting Agencies) Ltd* [1996] AC 102, [1995] 2 All ER 558, HL; and see PARA 1228. 'Concealed' bears its normal meaning, namely that something was actually hidden from view: *Giles v Rhind* [2008] EWCA Civ 118, [2008] 3 All ER 697, [2008] 2 BCLC 1. See also *Williams v Fanshaw Porter & Hazelhurst (a firm)* [2004] EWCA Civ 157, [2004] 2 All ER 616, [2004] 1 WLR 3185 (negligent solicitor agreed to consent order to strike out client's claim without obtaining instructions); *Skerratt v Linfax Ltd* [2003] EWCA Civ 695, [2003] All ER (D) 49 (May), [2004] PIQR P124 (claimant's belief that signing a disclaimer meant he used a go-karting track at his own risk, did not constitute deliberate concealment by the defendant of a cause of action); and *AIC Ltd v ITS Testing Services (UK) Ltd, The Kriti Palm* [2006] EWCA Civ 1601, [2007] 1 All ER (Comm) 667, [2007] 1 Lloyd's Rep 555 (intentional failure to disclose retest of quality of cargo of fuel amounted to deliberate concealment).

3 Limitation Act 1980 s 32(2). The term 'breach of duty' is wider than breach of contractual, tortious, equitable or fiduciary duty: *Giles v Rhind* [2008] EWCA Civ 118, [2008] 3 All ER 697, [2008] 2 BCLC 1 ('breach of duty' applies to transactions at undervalue which can be avoided under insolvency law).

4 *Cave v Robinson Jarvis and Rolf (a firm)* [2002] UKHL 18, [2003] 1 AC 384, [2002] 2 All ER 641. The Limitation Act 1980 s 32 deprives a defendant of a limitation defence in two situations: first, where he has taken active steps to conceal his own breach of duty after he has become aware of it; and secondly, where he has been guilty of deliberate wrongdoing, and has concealed or failed to disclose it in circumstances where it was

unlikely to be discovered for some time. It does not, however, deprive a defendant of a limitation defence where he is charged with negligence if, being unaware of his error or his failure to take proper care, there has been nothing for him to disclose: *Cave v Robinson Jarvis and Rolf (a firm)*.

5 See *Frisby v Theodore Goddard & Co* (1984) Times, 7 March, CA. See also *Ayles v LAH Ayles Ltd* (8 February 1990, unreported), CA; *Cia de Seguros Imperio v Heath (REBX) Ltd (formerly CE Heath & Co (North America) Ltd)* [1999] 1 All ER (Comm) 750, [2001] 1 WLR 112 (relevant facts are those which are sufficient to constitute or complete a cause of action, not those which might be evidentially material to proving a claim); affd on different grounds [2000] 2 All ER (Comm) 797, [2001] 1 WLR 112, CA. The limitation period may not be extended where the claimant would have been in possession of all relevant facts if he had investigated the cause of action with reasonable diligence: *Ezekiel v Lehrer* [2001] Lloyd's Rep PN 401, [2001] All ER (D) 246 (Mar); affd [2002] EWCA Civ 16, [2002] Lloyd's Rep PN 260, [2002] All ER (D) 267 (Jan).

6 Eg deliberately covering up defective foundations or other defective work will come within the provision (*Gray v TP Bennett & Son* (1987) 43 BLR 63; *King v Victor Parsons & Co* [1973] 1 All ER 206, [1973] 1 WLR 29, CA); however, where negligently performed work is carried out, but the defendant has not deliberately concealed from the claimant the facts relevant to the right of action, he will not be liable unless it can be shown he knew the work was defective (see *Kaliszewska v John Clague & Partners* (1984) 5 ConLR 62; and *Ayles v LAH Ayles Ltd* (8 February 1990, unreported), CA).

7 Ie the Limitation Act 1939 s 26(b) (repealed).

8 See *Tito v Waddell (No 2)* [1977] Ch 106 at 245, [1977] 3 All ER 129 at 244 per Megarry V-C. For example, it was held under the previous legislation that there had been fraudulent concealment of a right of action in the following situations: where a bailee disposed of a bailor's property without the bailor being informed (*Beaman v ARTS Ltd* [1949] 1 KB 550, [1949] 1 All ER 465, CA; see generally **BAILMENT**); where solicitors failed to commence a claim on their client's behalf within the statutory period of limitation and concealed from the client the fact that the intended defendant subsequently made a gratuitous payment for her benefit (*Kitchen v Royal Air Forces Association* [1958] 2 All ER 241, [1958] 1 WLR 563, CA); where an insolvent deliberately omitted to give information as to his property (*Sturgis v Morse* (1857) 24 Beav 541 (affd (1858) 3 De G & J 1)); where a person was deliberately brought up as the second legitimate son, whereas he was, in fact, the eldest (*Vane v Vane* (1873) 8 Ch App 383); where a father, having made an advancement to his children, then proceeded to deal with the money representing the advancement as his own, without informing the children (*Re Shephard, Shephard v Cartwright* [1953] Ch 728 at 756, [1953] 2 All ER 608 at 619, CA, on appeal sub nom *Shephard v Cartwright* [1955] AC 43 at 450, [1954] 3 All ER 649 at 655, HL); where a builder, in breach of contract, knowingly performed bad work or used inferior materials in circumstances where the breach was unlikely to be discovered for a long time (*Clark v Woor* [1965] 2 All ER 353, [1965] 1 WLR 650; and see *Applegate v Moss* [1971] 1 QB 406, [1971] 1 All ER 747, CA; and *Kijowski v New Capital Properties Ltd* (1987) 15 ConLR 1); and, it would appear, where a person, having been entrusted with money belonging to another, paid it away wrongfully to a third person without informing the person to whom it belonged (*GL Baker Ltd v Medway Building and Supplies Ltd* [1958] 2 All ER 532 at 537, [1958] 1 WLR 1216 at 1223-1224). It is sufficient if a claimant knowingly committed a wrong and did not say anything about it; it is not necessary to show that he took active steps to conceal the wrongdoing: *King v Victor Parsons & Co* [1973] 1 All ER 206, [1973] 1 WLR 29, CA; cf *Ayles v LAH Ayles Ltd* (8 February 1990, unreported), CA; *Foreman v O'Driscoll & Partners (a firm)* [2000] Lloyd's Rep PN 720.

9 See eg *E Clarke & Sons (Coaches) Ltd v Axtell Yates Hallett* (1989) 30 ConLR 123.

10 *Mortgage Corpn v Alexander Johnson (a firm)* (1999) Times, 22 September.

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1227. Deliberate concealment in claims in negligence; latent damage.

The provisions imposing an alternative period of limitation in claims brought in negligence where the damage was not discoverable within the limitation period (latent damage)¹ do not apply to any claim to which the provision postponing limitation in cases of deliberate concealment² applies³. The applicable period of limitation in such cases is accordingly the normal six-year time limit for claims founded on tort⁴, postponed in accordance with the deliberate concealment provisions⁵.

1 Ie the Limitation Act 1980 ss 14A, 14B: see PARA 982.

2 Ie the Limitation Act 1980 s 32(1)(b): see PARA 1220.

3 Limitation Act 1980 s 32(5) (added by the Latent Damage Act 1986 s 2(2)).

4 Ie the Limitation Act 1980 s 2: see PARA 979.

5 See the Limitation Act 1980 s 32(1)(b) (amended by the Consumer Protection Act 1987 s Sch 1 para 5). Note that the 15-year maximum period of limitation imposed by s 14B(1) (see PARA 982) is also consequently inapplicable.

UPDATE

1227 Deliberate concealment in claims in negligence; latent damage

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(4) FRAUD, DELIBERATE CONCEALMENT OR MISTAKE/(iii) Deliberate Concealment/1228. Deliberate concealment after commencement of limitation period.

1228. Deliberate concealment after commencement of limitation period.

Where facts are deliberately concealed by a defendant after a cause of action has accrued and the limitation period has begun to run, a claimant can rely on the deliberate concealment provision¹ in order to overcome the statutory time bar². Alternatively, the claimant may be able to rely on the doctrine of estoppel³ in order to avoid the harsh consequences of the operation of the limitation period⁴.

1 I.e. the Limitation Act 1980 s 32(1)(b): see PARAS 1220, 1226.

2 *Sheldon v RHM Outhwaite (Underwriting Agencies) Ltd* [1996] AC 102, [1995] 2 All ER 558, HL (disapproving statements by Megarry V-C in *Tito v Waddell (No 2)* [1977] Ch 106, [1977] 3 All ER 129 to the effect that, once time begins to run, it runs continuously and a subsequent concealment will not start it running afresh).

3 See generally **ESTOPPEL**.

4 See *Kaliszewska v John Clague & Partners* (1984) 5 ConLR 62 (defendant architect falsely represented to claimant that cracks in building designed by him were insignificant with the result that limitation period had expired before claimant discovered truth; defendant estopped from relying on limitation period).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(4) FRAUD, DELIBERATE CONCEALMENT OR MISTAKE/(iii) Deliberate Concealment/1229. Conveyance by a mentally disordered person.

1229. Conveyance by a mentally disordered person.

A conveyance by a mentally disordered person may be void or voidable, but the mere fact of possession having been obtained from such a person was not of itself sufficient to establish a case of fraudulent concealment under the previous legislation and would probably not be sufficient to establish a case of deliberate concealment¹. That fact is, however, an element in the proof of fraud and, if the execution of a conveyance or devise is obtained from such a person in circumstances which show bad faith on the part of the grantee or devisee, and if the fact that it was so obtained is concealed from the persons entitled on the intestacy of the mentally disordered person, this may amount to concealed fraud². A person of unsound mind may be within the scope of the provision as to the limitation period in cases of disability³, but, in deciding at what time a person who has been defrauded might with reasonable diligence have discovered the fraud, the court will not take into consideration the capacity of such a person's mind to discover the fraud⁴.

1 *Manby v Bewicke* (1857) 3 K & J 342. See also *Price v Berrington* (1851) 3 Mac & G 486; and see generally **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 608-609. As to constructive fraud see **EQUITY** vol 16(2) (Reissue) PARA 416 et seq.

2 *Lewis v Thomas* (1843) 3 Hare 26.

3 I.e. the Limitation Act 1980 s 28: see PARA 1171 et seq.

4 *Manby v Bewicke* (1857) 3 K & J 342.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(4) FRAUD, DELIBERATE CONCEALMENT OR MISTAKE/(iv) Mistake/1230. Statutory provision.

(iv) Mistake

1230. Statutory provision.

Where a claim¹ is for relief from the consequences of a mistake, the period of limitation does not begin to run until the claimant has discovered the mistake or could with reasonable diligence² have discovered it³. This provision does not, however, enable any claim to recover any property (or the value of any property) or to enforce any charge against, or set aside any transaction affecting, any property to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the transaction in which the mistake was made took place⁴.

This provision applies to a claim at common law to recover back money paid under a mistake of fact or to an analogous claim in equity for money paid under a mistake of fact or law⁵, but it applies only where the mistake is an essential ingredient in the cause of action⁶. It has been held to apply to a claim by a taxpayer to recover payments of tax made under a mistake as to an aspect of revenue law⁷; but this decision has been effectively reversed by statute⁸.

The provision applies only to a claim for which a statutory period of limitation is prescribed, or to a claim in equity to which such a period is applied by analogy⁹. In the case of an application for a purely equitable remedy for which no period of limitation is applied by analogy, the position in relation to unconscionable delay ('laches') or acquiescence may still apply; namely that time runs from the date of notice of a mistake¹⁰.

1 As to the meaning of 'claim' see the Limitation Act 1980 s 38(1); and PARA 915.

2 As to what constitutes reasonable diligence see PARA 1223. See also *Fea v Roberts* [2005] EWHC 2186 (Ch), (2005) 8 ITELR 231, [2005] All ER (D) 69 (Sep) (executors paid defendant under the mistaken belief that he was the true beneficiary; no reason for them to revisit that assumption before they in fact discovered the truth when the correct beneficiary turned up); *Davies v Sharples* [2006] EWHC 362 (Ch), [2006] WTLR 839 (no reason to question the word of professional accountants who had dealt with administration of estate trusts). It has been suggested that the continuation of the facts which gave rise to the mistake on the part of the claimant in the first place may also support a finding of failure to exercise reasonable diligence immediately after the mistake occurred: see *West Sussex Properties Ltd v Chichester District Council* [2000] All ER (D) 887, CA, per Morritt LJ.

3 Limitation Act 1980 s 32(1)(c) (amended by the Consumer Protection Act 1987 Sch 1 para 5); and see PARA 1220. This is subject to the provisions protecting innocent third party purchasers (ie the Limitation Act 1980 s 32(3): see the text and note 4), to certain exceptions in the case of defective products (ie s 32(4A): see PARA 1220) and to the Finance Act 2007 s 107 (see PARA 1231).

4 Limitation Act 1980 s 32(3); and see PARA 1222.

5 *Re Diplock, Diplock v Wintle* [1948] Ch 465 at 515, [1948] 2 All ER 318 at 344, CA (affd sub nom *Ministry of Health v Simpson* [1951] AC 251, [1950] 2 All ER 1137, HL); and see note 7. As to the period of limitation normally applicable to a claim for money had and received see PARAS 952, 957. As to the period applicable to a claim to recover assets of a deceased person's estate see PARA 1161. As to the circumstances in which money paid under mistake of law may be recovered see **EQUITY** vol 16(2) (Reissue) PARA 439; **MISTAKE** vol 77 (2010) PARA 69 et seq.

6 *Phillips-Higgins v Harper* [1954] 1 QB 411, [1954] 1 All ER 116 (affd on appeal [1954] 1 QB 411, [1954] 2 All ER 51n, CA) (provision not applicable to claim for account brought by employee against employer who she alleged had underpaid her). It has been suggested that the provision will apply eg where money has been paid in consequence of a mistake and the claim is to recover the money back, or where a contract is entered into in

consequence of a mistake and the claim is to obtain rescission or, in some cases, rectification of the contract, or where an account is settled in consequence of mistakes and the mistakes are sufficiently serious to justify a reopening of the account: *Phillips-Higgins v Harper* [1954] 1 QB 411 at 418, [1954] 1 All ER 116 at 119 per Pearson J (decided under the Limitation Act 1939 (repealed)); but as to the position where a purely equitable remedy is sought see the text and note 10. As to the rescission of contracts see generally **MISREPRESENTATION AND FRAUD**; and **MISTAKE** vol 77 (2010) PARA 52 et seq. As to the rectification of contracts see generally **MISTAKE** vol 77 (2010) PARA 57 et seq.

7 See *Deutsche Morgan Grenfell Group plc v IRC* [2006] UKHL 49, [2007] 1 AC 558, [2007] 1 All ER 449.

8 See PARA 1231.

9 See the Limitation Act 1980 s 32(1) (as amended: see note 3).

10 See *Beale v Kyte* [1907] 1 Ch 564 at 566 (claim for rectification); and see generally **MISTAKE** vol 77 (2010) PARA 57 et seq.

UPDATE

1230 Statutory provision

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3. EXTENDED OR POSTPONED LIMITATION PERIODS/(4) FRAUD, DELIBERATE CONCEALMENT OR MISTAKE/(iv) Mistake/1231. Postponement of limitation period disapplied in certain cases of mistake as to revenue law.

1231. Postponement of limitation period disapplied in certain cases of mistake as to revenue law.

The provision of the Limitation Act 1980 postponing the period of limitation where a claim is for relief from the consequences of a mistake¹ does not apply in relation to any claim² brought before 8 September 2003 for relief from the consequences of a mistake of law relating to a taxation matter under the care and management of the (then) Commissioners of Inland Revenue (now the Commissioners for Revenue and Customs)³; and this disapplication:

151 (1) has effect regardless of how the grounds on which the claim was brought were expressed and of whether it was also brought otherwise than for such relief⁴; but

152 (2) does not have effect in relation to a claim, or so much of a claim as relates to a cause of action, if:

5

6. (a) the claim, or cause of action, has been the subject of a judgment⁵ of the House of Lords given⁶ before 6 December 2006 as to the application of that provision of the Limitation Act 1980 in relation to such relief⁷; or

7. (b) the parties to the claim are, in accordance with a group litigation order⁸, bound in relation to the claim, or cause of action, by a judgment of the House of Lords in another claim given before that date as to the application of that provision in relation to such relief⁹.

6

Nor does that provision of the Limitation Act 1980¹⁰ apply in relation to a claim brought on or after 8 September 2003 for relief from the consequences of a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue or, now, the Commissioners for Revenue and Customs¹¹; and this applies to any proceedings or claim for relief from the consequences of a mistake of law, whether expressed to be brought on the ground of mistake or on some other ground, such as unlawful demand or ultra vires act¹².

1 le the Limitation Act 1980 s 32(1)(c): see PARA 1230.

2 The statutory wording is 'action'; but an 'action' is now generally referred to as a 'claim': see PARA 915; and **CIVIL PROCEDURE** vol 11 (2009) PARA 18.

3 See the Finance Act 2007 s 107(1). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 Finance Act 2007 s 107(2).

5 For these purposes, 'judgment' includes order: Finance Act 2007 s 107(6).

6 For these purposes, 'given' includes made: Finance Act 2007 s 107(6).

7 See eg *Deutsche Morgan Grenfell Group plc v IRC* [2006] UKHL 49, [2007] 1 AC 558, [2007] 1 All ER 449.

8 For these purposes, 'group litigation order' means an order of a court providing for the case management of claims which give rise to common or related issues of fact or law: see the Finance Act 2007 s 107(6). As to group litigation orders see **CIVIL PROCEDURE** vol 11 (2009) PARAS 233-235.

9 Finance Act 2007 s 107(3). If the judgment of any court was given on or after 6 December 2006 but before the day on which the Finance Act 2007 was passed (ie 19 July 2007), the judgment is to be taken to have been what it would have been had s 107(1)-(3) been in force at all times since the claim was brought (and any defence of limitation which would have been available had been raised) (s 107(4)); and any payment made to satisfy a liability under the judgment which (in consequence of s 107(4)) is to be taken not to have been imposed is repayable (with interest from the date of the payment) (s 107(5)).

10 See note 1.

11 See the Finance Act 2004 s 320(1); the Commissioners for Revenue and Customs Act 2005 s 50(1), (7). For the purposes of the Limitation Act 1980 s 35(5)(a) (see PARAS 931, 944) (circumstances in which time-barred claim may be brought in course of existing claim), and rules of court having effect for the purposes of those provisions, as they apply to claims in respect of mistakes of the kind mentioned in the Finance Act 2004 s 320(1), a new claim is not to be regarded as arising out of the same facts, or substantially the same facts, if it is brought in respect of a different payment, transaction, period or other matter; and this provision has effect in relation to claims made on or after 20 November 2003: Finance Act 2004 s 320(2).

If before the passing of the Finance Act 2004 (ie 22 July 2004): (1) a claim was brought in relation to which a defence of limitation would have been available if s 320(1) had been in force; or (2) a claim is made on or after 20 November 2003 that by virtue of the Limitation Act 1980 s 35(1)(b) is treated as a claim brought before 8 September 2003 and that claim would not have been allowed if the Finance Act 2004 s 320(1), (2) had been in force, the claim (or so much of it as relates to a cause of action in respect of which a defence of limitation would have been available or, as the case may be, a claim would not have been allowed) is deemed to be discontinued on the passing of the 2004 Act and any payment made by the Commissioners in or towards meeting their liability in the claim (or so much of the claim as so relates) may be recovered by them (with interest from the date of the payment): s 320(3). Nothing in s 320, however, affects a claim made before 20 November 2003 that by virtue of the Limitation Act 1980 s 35(1)(b) (see PARA 931 note 3) is treated as a claim brought before 8 September 2003: Finance Act 2004 s 320(4). For these purposes, a claim is treated as made before 20 November 2003 if (1) the Commissioners have before that date consented in writing to the making of the claim; or (2) immediately before that date (a) the consent of the Commissioners has been sought and has not been refused; or (b) an application to the court for permission to make the claim has been made and has not been refused: s 320(5). As to the effect of s 320 upon claims brought before 8 September 2003 but amended after 20 November 2003 to add a claim in mistake see *Europcar UK Ltd v Revenue and Customs Comrs* [2008] EWHC 1363 (Ch), [2008] All ER (D) 260 (Jun) (in order to escape the consequences of the Finance Act 2004 s 320, claimants had to establish that amendments to the claim form had not had the effect of adding new claims, or (if they had added new claims) that the new claims arose out of the same or substantially the same facts as a claim in respect of which they had already claimed a remedy; held on the facts that amendments made by fifth defendant amounted to adding a new claim and s 320 excluded the operation of the extended limitation period under the Limitation Period 1980 s 32(1)(c)).

12 See the Finance Act 2004 s 320(6). Section 320 is to be construed as one with the Limitation Act 1980: s 320(7).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(5) ENEMIES AND WAR PRISONERS/1232.
Suspension of limitation periods for enemies and war prisoners.

(5) ENEMIES AND WAR PRISONERS

1232. Suspension of limitation periods for enemies and war prisoners.

If at any time before the expiration of the period prescribed by any statute of limitation¹ for the bringing of any claim² any person who would have been a necessary party to that claim³ if it had then been brought was an enemy⁴ or was detained⁵ in enemy territory⁶, that period is deemed not to have run while that person was an enemy or was so detained⁷, and does not in any case expire before the end of 12 months from the date when he ceased to be an enemy or to be so detained, whichever is the later⁸. That provision applies to proceedings to which the Crown is a party, including proceedings to which Her Majesty is a party in right of the Duchy of Lancaster and proceedings in respect of property belonging to the Duchy of Cornwall⁹.

No one may apply under the provisions of the Land Registration Act 2002 relating to adverse possessors¹⁰ to be registered¹¹ as the proprietor of an estate in land¹² during, or before the end of 12 months after the end of, any period in which the existing registered proprietor is, for the above purposes, either an enemy or detained in enemy territory¹³.

1 'Statute of limitation' means any of the following enactments: the Limitation Act 1980; the Fatal Accidents Act 1846 s 3 (repealed: see now the Limitation Act 1980 s 12; and PARA 1000); the Maritime Conventions Act 1911 s 8 (repealed: see now the Merchant Shipping Act 1995 s 190; and PARA 912); the Carriage of Goods by Sea Act 1924 art III r 6 (repealed); the Law Reform (Miscellaneous Provisions) Act 1934 s 1; the Matrimonial Causes Act 1973 s 13(2), Sch 1 para 11(3); the Civil Partnership Act 2004 s 51(2); the Limitation Act 1963 s 4(1) (repealed); the Nullity of Marriage Act 1971 s 3(2) (repealed); and, in a case to which the Foreign Limitation Periods Act 1984 s 1(1) applies, so much of the law of any country outside England and Wales as applies by virtue of the 1984 Act: Limitation (Enemies and War Prisoners) Act 1945 s 2(1), (5) (definition in s 2(1) amended by the Carriage by Air Act 1961 s 14(3), Sch 2; the Limitation Act 1963 s 4(3); the Nullity of Marriage Act 1971 s 7(2); the Matrimonial Causes Act 1973 Sch 2 para 2; the Consumer Credit Act 1974 Sch 5 Pt I; the Limitation Act 1980 Sch 3 para 3; the Foreign Limitation Periods Act 1984 s 2(4); the Copyright, Designs and Patents Act 1988 Sch 8; the Statute Law (Repeals) Act 1993; the Civil Partnership Act 2004 Sch 27 para 11; and by SI 1983/1551).

2 'Claim' means civil proceedings before any court or tribunal and includes arbitration proceedings: see the Limitation (Enemies and War Prisoners) Act 1945 s 2(1). The statutory wording is 'action'; but an action is now generally known as a 'claim': see **CIVIL PROCEDURE** vol 11 (2009) PARA 18.

3 References to any person who would have been a necessary party to a claim include references to any person who would have been such a necessary party but for the statutory provisions as to collection of enemy debts and custody of enemy property (ie the Trading with the Enemy Act 1939 s 7; and see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARAS 585-586) or any order made under it: Limitation (Enemies and War Prisoners) Act 1945 s 2(2).

4 'Enemy' means any person who is, or is deemed to be, an enemy for any of the purposes of the Trading with the Enemy Act 1939 (see ss 2, 15; and **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 577), except that, in ascertaining whether a person is such an enemy, the expression 'enemy territory' in s 2 has the special meaning (see note 6) assigned to that expression by the Limitation (Enemies and War Prisoners) Act 1945 s 2(1): s 2(1). By virtue of that special meaning, it is possible for a person not to be an enemy for the purpose of bringing a claim and yet continue to be an enemy for the purpose of the suspension of the running of time: see *Société Dunkerquoise de Remorquage et de Sauvetage v Atlantic Scout (Owners), The Atlantic Scout* [1950] P 266. As to persons who were only enemies as respects a business see the Limitation (Enemies and War Prisoners) Act 1945 s 1(1); and PARA 1233.

5 References to the period during which any person was detained in enemy territory include references to any period immediately following the period of that detention during which that person remained in enemy territory: Limitation (Enemies and War Prisoners) Act 1945 s 2(3).

6 'Enemy territory' means (1) any area which is enemy territory as defined by the Trading with the Enemy Act 1939 s 15(1); (2) any area in relation to which the provisions of that Act apply, by virtue of an order made under s 15(1A), as they apply in relation to enemy territory as so defined; and (3) any area which, by virtue of the Emergency Laws (Miscellaneous Provisions) Act 1953 s 2, Sch 2 para 9, or any order made thereunder, is treated for any of the purposes of the Trading with the Enemy Act 1939 as enemy territory as so defined or such territory as is referred to in head (2) above: see the Limitation (Enemies and War Prisoners) Act 1945 s 2(1), (5). As to the effect of this special meaning on the meaning of 'enemy' see note 4. As to these different categories of enemy territory see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 578. A certificate of the Secretary of State is conclusive evidence of certain matters affecting this meaning of enemy territory: s 2(4), applying the Trading with the Enemy Act 1939 s 15(2).

7 As to the burden of proof and the effect of two or more periods see PARA 1234.

8 Limitation (Enemies and War Prisoners) Act 1945 s 1(1). As to the effect of war on the limitation of claims apart from these provisions see PARA 925.

9 Limitation (Enemies and War Prisoners) Act 1945 s 3.

10 le under the Land Registration Act 2002 Sch 6: see PARA 1029 et seq; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1025 et seq.

11 As to the meaning of 'registered' see PARA 1030 note 2.

12 As to the meaning of 'land' see PARA 1018.

13 Land Registration Act 2002 Sch 6 para 8(1).

UPDATE

1232 Suspension of limitation periods for enemies and war prisoners

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/3.
EXTENDED OR POSTPONED LIMITATION PERIODS/(5) ENEMIES AND WAR PRISONERS/1233.
Application to business in enemy territory and to the Crown.

1233. Application to business in enemy territory and to the Crown.

Where any person was only an enemy¹ as respects a business carried on in enemy territory², the statutory provision as to the suspension of limitation periods for enemies and war prisoners³ only applies, so far as that person is concerned, to claims⁴ arising in the course of that business⁵.

1 As to the meaning of 'enemy' see PARA 1232 note 4.

2 As to the meaning of 'enemy territory' see PARA 1232 note 6.

3 I.e. the Limitation (Enemies and War Prisoners) Act 1945 s 1(1): see PARA 1232.

4 As to the meaning of 'claim' see PARA 1232 note 2.

5 Limitation (Enemies and War Prisoners) Act 1945 s 1(1).

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EXTENDED OR POSTPONED LIMITATION PERIODS/(5) ENEMIES AND WAR PRISONERS/1234.
Burden of proof and effect of two or more periods.

1234. Burden of proof and effect of two or more periods.

If it is proved in any claim¹ that any person was resident or carried on business or was detained in enemy territory² at any time, then for the purposes of the statutory provision as to the suspension of limitation periods for enemies and war prisoners³ he must be presumed to have continued to be resident or to carry on business or to be detained, as the case may be, in that territory until it ceased to be enemy territory, unless it is proved that he ceased to be resident or to carry on business or to be detained at an earlier date⁴.

If two or more periods have occurred in which any person who would have been a necessary party to a claim⁵ was an enemy⁶ or was detained in enemy territory, those periods must be treated as one continuous such period beginning with the beginning of the first period and ending with the end of the last period⁷.

1 As to the meaning of 'claim' see PARA 1232 note 2.

2 As to the meaning of 'enemy territory' see PARA 1232 note 6.

3 I.e. the Limitation (Enemies and War Prisoners) Act 1945 s 1: see PARA 1232.

4 Limitation (Enemies and War Prisoners) Act 1945 s 1(2).

5 As to the construction of references to a necessary party to the claim see PARA 1232 note 3.

6 As to the meaning of 'enemy' see PARA 1232 note 4.

7 Limitation (Enemies and War Prisoners) Act 1945 s 1(3).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/4.
FOREIGN AND EUROPEAN LIMITATION/1235. Application of foreign limitation law; in general.

4. FOREIGN AND EUROPEAN LIMITATION

1235. Application of foreign limitation law; in general.

Subject to certain exceptions¹, where in any claim² or proceedings in a court in England and Wales the law³ of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter, (1) the law of that other country relating to limitation applies in respect of that matter for the purposes of the claim or proceedings; and (2) unless both the law of England and Wales and the law of some other country fall to be taken into account in the matter being determined⁴, the law of England and Wales relating to limitation does not apply⁵. The foreign law relating to the limitation of claims is to be treated as a matter of substance rather than as a matter of procedure in such cases, with the effect that as a general rule, in relation to the litigation of foreign claims in England and Wales, the foreign limitation period applies, even where it has barred the remedy without extinguishing the claim⁶.

Where a court in England and Wales, applying the law of another country relating to limitation, is called upon to exercise any discretion conferred by that law, it must, so far as practicable, exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country⁷.

1 As to the exceptions to this provision see the text and notes 5-7; and PARA 1236.

2 As to the meaning of 'claim' under the Limitation Act 1980 see PARA 915.

3 'Law' in relation to any country does not include rules of private international law applicable to the courts of that country or, in the case of England and Wales, the Foreign Limitation Periods Act 1984: s 1(5). As to such 'applicable law' in claims of contract and tort see PARA 1238.

4 Foreign Limitation Periods Act 1984 s 1(2); and see *Gotha City v Sotheby's (No 2)*, *Germany v Sotheby's* (1998) Times, 8 October.

5 Foreign Limitation Periods Act 1984 s 1(1). This provision is subject to certain exceptions in case of conflict with public policy: see PARA 1236.

The law of England and Wales determines for the purposes of any law applicable by virtue of s 1(1)(a) (see head (1) in the text) whether, and the time at which, proceedings have been commenced in respect of any matter; and accordingly, the Limitation Act 1980 s 35 (new claims in pending proceedings: see PARAS 929, 931, 944) applies in relation to time limits applicable by virtue of that head as it applies in relation to time limits under the 1980 Act: Foreign Limitation Periods Act 1984 s 1(3).

The provisions of the Foreign Limitation Periods Act 1984 apply to any claim or proceedings by or against the Crown as they apply to claims and proceedings to which the Crown is not a party: s 6(1); and see PARA 903.

6 See the long title to the Foreign Limitation Periods Act 1984. At common law, if a claim was brought in England, then wherever the cause of claim arose the period of limitation was governed by the appropriate English limitation enactment, except where the foreign limitation law was substantive rather than procedural (ie had extinguished the right as well as the remedy rather than just the remedy): see eg *Huber v Steiner* (1835) 2 Scott 304; and *Harris v Quine* (1869) LR 4 QB 653. By virtue of the 1984 Act, it is now immaterial that, under the proper law, the limitation period might be regarded as procedural: see *Bank of America National Trust and Savings Association v Epidavros Gulf Shipping Co SA, The Cape Sounion* [1990] 2 Lloyd's Rep 329.

7 Foreign Limitation Periods Act 1984 s 1(4). However, in exercising that discretion, the court must have regard to public policy and, in particular, whether the exercise of the discretion to allow a claim to proceed would cause undue hardship to a person who is, or might be made, a party to the proceedings: see s 2(1), (2); and PARA 1236.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/4. FOREIGN AND EUROPEAN LIMITATION/1236. Non-application of foreign limitation law; conflict with public policy.

1236. Non-application of foreign limitation law; conflict with public policy.

A foreign limitation period will not apply, as an exception to the normal rule¹, where its application would conflict with public policy²; and it is deemed so to conflict to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the proceedings³. Where, under a foreign limitation law which is applicable⁴ for the purposes of any claim or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the claim or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption must be disregarded for those purposes⁵.

In determining whether the application of a foreign limitation period would conflict with public policy, it has been suggested⁶ that the following principles apply:

- 153 (1) public policy ought to be invoked for the purposes for disapplying a foreign limitation period only in exceptional circumstances; too ready a resort to public policy would frustrate our system of private international law which exists to fulfil foreign rights not to destroy them⁷;
- 154 (2) foreign law ought not to invoke public policy save in cases where that law is manifestly incompatible with public policy⁸; so too the English courts will refuse to recognise discriminatory limitation law;
- 155 (3) the fundamental principle of justice with which it is said foreign law conflicts must be clearly identifiable, and the process of identification must not depend upon a judge's individual notion of expediency or fairness but upon the possibility of recognising with clarity a principle derived from the domestic law of limitation or some other clearly recognised general principle of public policy⁹; English courts ought not to invoke public policy save in cases where foreign law is manifestly incompatible with public policy;
- 156 (4) the English law of limitation serves the purpose of providing protection for defendants from stale claims, encouraging claimants to institute proceedings without unreasonable delay and conferring on a potential defendant confidence that after the lapse of a specific period of time he will not face a claim¹⁰; and
- 157 (5) a foreign limitation period will not be disapplied as being contrary to public policy merely because it is less generous than the comparable English provision¹¹; some reason other than mere length of time must be identified for invoking public policy¹².

1 For the normal rule see the Foreign Limitation Periods Act 1984 s 1; and PARA 1235.

2 Foreign Limitation Periods Act 1984 s 2(1). If a foreign limitation period is disapplied it seems the court may not reapply it by reverting to the common law position adopted prior to the 1984 Act; quaere whether in that situation no limitation period applies or whether the English court will apply its domestic rules of limitation: see *Hellenic Steel Co v Svolomar Shipping Co Ltd, The Komninos S* [1991] 1 Lloyd's Rep 370 at 377, CA, per Bingham LJ; and *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep 543 at 593 per Evans J.

Note that the 1984 Act cannot be used to disapply the English law of limitation on public policy grounds: see *Chagos Islanders v A-G* [2003] EWHC 2222 (QB), (2003) Times, 10 October, [2003] All ER (D) 166 (Oct); affd [2004] EWCA Civ 997, (2004) Times, 21 September, [2004] All ER (D) 85 (Aug).

3 Foreign Limitation Periods Act 1984 s 2(2). 'Undue' in this context means 'excessive or a greater hardship than the circumstances warranted': *Jones v Trollope Colls Cementation Overseas Ltd* (1990) Times, 26 January,

CA, per Farquharson LJ. The fact that the relevant foreign limitation period is less generous than that which would apply under English law at the time should not in itself be regarded as causing undue hardship to a claimant: see *Durham v T & N plc* (1 May 1996, unreported), CA; cf *Jones v Trollope Colls Cementation Overseas Ltd* (claimant hospitalised for long period and led to believe claim would be met). The hardship must be caused by the application of the foreign law of limitation rather than English law: *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep 543 at 592. See also *Connelly v Rio Tinto plc* (4 December 1998, unreported), QBD (not contrary to public policy to enforce Namibian three-year limitation period in personal injuries claim with no provision for discretionary extension of time).

4 le under the Foreign Limitation Periods Act 1984 s 1(1)(a): see PARA 1235.

5 Foreign Limitation Periods Act 1984 s 2(3).

6 See *Gotha City v Sotheby's (No 2)*, *Germany v Sotheby's* (1998) Times, 8 October, obiter per Wright J.

7 See *Classification of Limitation in Private International Law* (Law Com no 114) (1982); *Arab Monetary Fund v Hashim* [1993] 1 Lloyd's Rep 543 at 592.

8 See *Oppenheimer v Cattermole* [1976] AC 249, [1975] 1 All ER 538, HL.

9 See *Classification of Limitation in Private International Law* (Law Com no 114) (1982) paras 4.35, 4.45.

10 See *Classification of Limitation in Private International Law* (Law Com no 114) (1982) para 4.44.

11 See *Durham v T & N plc* (1 May 1996, unreported), CA.

12 See note 6.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/4.
FOREIGN AND EUROPEAN LIMITATION/1237. Foreign judgments on limitation.

1237. Foreign judgments on limitation.

Where a court in any country outside England and Wales has determined any matter wholly or partly by reference to the law of that or any other country (including England and Wales) relating to limitation¹, then, for the purposes of the law relating to the effect to be given in England and Wales to that determination, that court is, to the extent that it has so determined the matter, deemed to have determined it on its merits².

1 Subject to the Foreign Limitation Periods Act 1984 s 4(3), references to the law of any country (including England and Wales) relating to limitation are construed as references to so much of the relevant law of that country as makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and include (1) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and (2) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period: s 4(1). 'Relevant law' in relation to any country means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country: s 4(2).

References to the law of England and Wales relating to limitation do not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside England and Wales is applicable by virtue of s 1(1)(a) (see PARA 1235), not being a law that provides for a limitation period that has expired, a court in England and Wales must have regard, in particular, to the provisions of the law that is so applicable: s 4(3).

2 Foreign Limitation Periods Act 1984 s 3.

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/4. FOREIGN AND EUROPEAN LIMITATION/1238. Claims in contract and tort.

1238. Claims in contract and tort.

In relation to claims brought in contract, the applicable law¹ governs the prescription and limitation of claims².

In relation to claims brought in tort involving a foreign element, the law to be applied is generally that of the country in which the events constituting the tort occurred³. Where elements of the tort occur in different countries, the law governing the claim is as follows:

- 158 (1) for a cause of action in respect of personal injury caused to an individual or death resulting from the personal injury, the law of the country where the individual was when he sustained the injury;
- 159 (2) for a cause of action in respect of damage to property, the law of the country where the property was when it was damaged;
- 160 (3) in any other case, the law of the country in which the most significant element or elements of those events occurred⁴.

1 The law applicable to a contract by virtue of the Convention on the Law Attributable to Contractual Obligations (Rome, opened for signature 19 June 1980) arts 3-6, 12: see art 10 para 1(d). The Rome Convention was signed by the United Kingdom on 7 December 1981 and brought into force in the United Kingdom on 1 April 1991 by the Contracts (Applicable Law) Act 1990 ss 2, 7; Contracts (Applicable Law) Act 1990 (Commencement No 1) Order 1991, SI 1991/707. Under the Rome Convention, the applicable law is the domestic system of law identified as such, other than its rules of private international law; no renvoi is permitted to the law of another country in order that this law should govern the contract from its inception: see art 15. As to the doctrine of renvoi generally see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 6 et seq. See further **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 349-354. As to the meaning of 'United Kingdom' see PARA 910 note 1.

2 Rome Convention art 10 para 1(d), applied by the Contracts (Applicable Law) Act 1990 ss 1(a), 2(2), (4)(a) in relation to contracts concluded after 1 April 1991: see note 1. The parties themselves may nevertheless agree to change the applicable law: see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 351.

3 See the Private International Law (Miscellaneous Provisions) Act 1995 s 11. The former double claimability rule established in the case of *Phillips v Eyre* (1870) LR 6 QB 1, Ex Ch (that a claimant must have a cause of action both under the law of the forum and the law of the country where the tortious act occurred) is abolished in respect of torts committed after 1 May 1996, save in cases of defamation: see the Private International Law (Miscellaneous Provisions) Act 1995 ss 10, 13; the Private International Law (Miscellaneous Provisions) Act 1995 (Commencement) Order 1996, SI 1996/995. Provision is made for displacement of the general rule in special circumstances: see the Private International Law (Miscellaneous Provisions) Act 1995 s 12. See further **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 368-372.

4 Private International Law (Miscellaneous Provisions) Act 1995 s 11(2).

Halsbury's Laws of England/LIMITATION PERIODS (VOLUME 68 (2008) 5TH EDITION)/4. FOREIGN AND EUROPEAN LIMITATION/1239. Limitation periods for cases involving the application or non-implementation of European Community law.

1239. Limitation periods for cases involving the application or non-implementation of European Community law.

In proceedings brought in national courts to enforce rights conferred by European Community law, where no limitation period is prescribed by the regulation or Directive in question the relevant limitation period is generally that fixed by the law of the state in which the claim is brought¹. Time limits in respect of claims based directly on European Community law but brought before English courts can be evolved, if necessary by analogy to statutory or common law periods for bringing similar claims². By virtue of the principle of equivalence, however, procedural rules governing claims enabling individuals to exercise rights conferred by the Community legal order may not be less favourable than those governing similar claims of a domestic nature³, and by virtue of the principle of effectiveness, the procedural rules governing domestic claims may not be such as to render virtually impossible or excessively difficult the exercise of rights conferred by the Community legal order⁴. The European Court of Justice has consistently held that the setting of reasonable limitation periods for bringing proceedings is compatible with Community law⁵. Where a European Community Directive has not been implemented, or has not been properly implemented, in domestic law, it has been held that for as long as that position continues the competent authority in a member state cannot rely on domestic procedural rules relating to time limits for bringing proceedings to enforce the rights conferred by that Directive⁶; but it has since been stated that the decision to that effect, although not overruled, is to be regarded as confined to the particular circumstances of the case, in which a time bar had the result of depriving the applicant of any opportunity whatever to rely on her right to equal treatment under the relevant European Directive⁷. Furthermore, a time limit for bringing proceedings is to be distinguished from rules which merely limit the retroactive effect of claims, such as a three-month limit on the retrospective payment of family benefits⁸ or a time limit for applying for a tax refund⁹.

Where European legislation prescribes a limitation period, it will fall to the domestic court to apply that provision¹⁰.

1 See Case 33/76 *Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland* [1976] ECR 1989, [1977] 1 CMLR 533, ECJ; applied in *UNISON v Brennan* [2008] ICR 955, [2008] All ER (D) 29 (Apr), EAT; *Preston v Wolverhampton Healthcare NHS Trust (No 2)* [2001] UKHL 5, [2001] 2 AC 455, [2001] 3 All ER 947; Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust, Fletcher v Midland Bank plc* [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201, ECJ; Case C-343/96 *Dilexport Srl v Amministrazione delle Finanze dello Stato* [2000] All ER (EC) 600, [1999] ECR I-579, ECJ; considered in Cases C-52/99, C-53/99 *Office National des Pensions (ONP) v Camarotto, Office National des Pensions (ONP) v Vignone* [2001] All ER (D) 279 (Feb), [2001] ECR I-1395, ECJ.

2 See *Cannon v Barnsley Metropolitan Borough Council* [1992] IRLR 474, EAT.

3 As to the criteria for identifying a similar domestic claim see Case C-326/96 *Levez v TH Jennings (Harlow Pools) Ltd* [1999] ICR 521, [1998] ECR I-7835, ECJ (a rule of national law will be deemed equivalent where the purpose and cause of action are similar, but this does not require member states to extend their most favourable rules to all claims brought in the field of employment law); followed in Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust, Fletcher v Midland Bank plc* [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201, ECJ. See also Case C-261/95 *Palmisani v Istituto Nazionale della Previdenza Social (INPS)* [1997] ECR I-4025, [1997] 3 CMLR 1356, ECJ; Case C-231/96 *Edilizia Industriale Siderurgica Srl (EDIS) v Ministero delle Finanze* [1998] ECR I-4951, [1999] 2 CMLR 995, ECJ. In order to decide whether procedural rules are equivalent, the national court must verify objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, as well as the operation of that procedure and any special features of those rules: Case C-78/98 *Preston v Wolverhampton Healthcare NHS*

Trust, Fletcher v Midland Bank plc [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201 (para 63), ECJ. See also *Byrne v Motor Insurers Bureau* [2008] EWCA Civ 574, [2008] All ER (D) 307 (May) (1972 Untraced Drivers Agreement and its 1996 successor did not satisfy the principle of equivalence for the purposes of EEC Council Directive 84/5 (OJ L8, 11.1.84, p 17) on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles (the Second Motor Insurance Directive), since unlike the Limitation Act 1980 ss 28, 38(2) (see PARAS 1170-1171) they contained no provision for the extension of time in the case of a person under a disability).

4 Case 45/76 *Comet BV v Produktschap voor Siergewassen* [1976] ECR 2043, ECJ; and see Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust, Fletcher v Midland Bank plc* [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201, ECJ.

5 See Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust, Fletcher v Midland Bank plc* [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201, ECJ, where the relevant caselaw is reviewed.

6 See Case C-208/90 *Emmott v Minister for Social Welfare and A-G* [1991] ECR I-4269, [1991] IRLR 387, ECJ, followed by the French Supreme Court in *Société Groupe André v Directeur Général des Impôts* [1997] 2 CMLR 117, CFI (limitation period did not begin to run until date on which Directive incorporated into national law); and by the Employment Appeal Tribunal in *Cannon v Barnsley Metropolitan Borough Council* [1992] IRLR 474, EAT.

A member state will incur liability for a breach of Community law where: (1) the rule of Community law infringed is intended to grant rights to individuals; (2) the breach is sufficiently serious and there was a manifest and grave disregard by the member state of its discretion; and (3) there is a direct causal link between the breach of the obligation resting on the member state and the damage sustained by the injured party: see Joined cases C-6/90 and C-9/90 *Francovich and Bonifaci v Italy* [1991] ECR I-5357, [1992] IRLR 84, ECJ; Joined cases C-46/93 and C-48/93 *Brasserie du Pêcheur SA v Germany, R v Secretary of State for Transport, ex p Factortame Ltd* [1996] ECR I-1029, [1996] All ER (EC) 301, ECJ; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94, and C-190/94 *Dillenkofer v Germany* [1997] QB 259, [1996] All ER (EC) 917, [1996] ECR I-4845, ECJ; applied in *Poole v HM Treasury* [2006] EWHC 2731 (Comm), [2007] 1 All ER (Comm) 255, [2007] 1 Lloyd's Rep IR 114 (affd [2007] EWCA Civ 1021, [2008] 1 All ER (Comm) 1132, [2008] Lloyd's Rep IR 134). Where the Crown is in breach of a duty imposed by a European Directive, that breach is a continuing one and gives rise to a fresh cause of action on each occasion when the claimant suffers consequential damage: *Phonographic Performance Ltd v Department of Trade and Industry* [2004] EWHC 1795 (Ch), [2005] 1 All ER 369, [2004] 1 WLR 2893. Contrast *Moore v Secretary of State for Transport* [2007] EWHC 879 (QB), [2007] All ER (D) 152 (Apr); affd sub nom *Spencer v Secretary of Work and Pensions, Moore v Secretary of State for Transport* [2008] EWCA Civ 750, [2008] All ER (D) 20 (Jul) (claimant became the victim of an untraced driver; failure to implement EEC Council Directive 84/5 (OJ L8, 11.1.84, p 17) on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles (the Second Motor Insurance Directive) did not give rise to separate and distinct causes of action which went on accruing after the date of the original cause of action).

7 See Case C-338/91 *Steenhorst-Neerings v Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, [1994] IRLR 244, ECJ; Case C-410/92 *Johnson v Chief Adjudication Officer (No 2)* [1994] ECR I-5483, [1995] All ER (EC) 258, ECJ. See also *Poole v HM Treasury* [2006] EWHC 2731 (Comm) at [228], [2007] 1 All ER (Comm) 255 at [228], [2007] 1 Lloyd's Rep IR 114 per Langley J ('It would, I think, be difficult to find a case which, whilst never being overruled, has been more emasculated by subsequent decisions than *Emmott's* case. "Unqualified *Emmott*" is, beyond doubt, now of no authority. National limitation periods can and do bite before a Directive is implemented in respect of claims for non-transposition'); affd without discussion of the limitation issue [2007] EWCA Civ 1021, [2008] 1 All ER (Comm) 1132, [2008] Lloyd's Rep IR 134.

8 See Case C-410/92 *Johnson v Chief Adjudication Officer (No 2)* [1995] All ER (EC) 258, [1994] ECR I-5483, ECJ, following Case C-338/91 *Steenhorst-Neerings v Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, [1994] IRLR 244, ECJ. Contrast Case C-246/96 *Magorrian v Eastern Health and Social Services Board* [1998] All ER (EC) 38, [1997] ECR I-7153, ECJ (where the applicant's claim was not for the retrospective award of additional benefits but for recognition of her entitlement to full membership of an occupational pension scheme, and a two-year limitation period preventing her record of service from 1976 to 1990 from being taken into account was held not to be permissible under EC law); applied in Case C-78/98 *Preston v Wolverhampton Healthcare NHS Trust, Fletcher v Midland Bank plc* [2001] 2 AC 415, [2000] All ER (EC) 714, [2000] ECR I-3201, ECJ.

9 See *BP Supergas Anonimos Etairia Geniki Emporiki-Viomichaniki kai Antiprossopeion v Greece* [1995] All ER (EC) 684, [1995] ECR I-1883, ECJ.

10 See eg *Department for Environment, Food and Rural Affairs v Maltco 3 Ltd* [2003] EWHC 469 (QB), [2003] 2 CMLR 164, [2003] All ER (D) 202 (Mar); revsd in part [2004] EWCA Civ 82, [2004] All ER (D) 190 (Jan).

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1240. Limitation periods applying in proceedings before the European Court of Justice.

Proceedings in the European Court of Justice:

- 161 (1) brought by a member state, the European Parliament, the EC Council or the EC Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the EC Treaty or of any rule of law relating to its application, or misuse of powers;
- 162 (2) brought by the Court of Auditors and by the European Central Bank for the purpose of protecting their prerogatives; or
- 163 (3) instituted by any natural or legal person against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former,

must be instituted within two months of the publication of the measure, or of its notification to the claimant, or, in the absence of publication, of the day on which it came to the knowledge of the latter, as the case may be¹.

Proceedings by member states and the other institutions of the Community alleging a failure, in infringement of the EC Treaty, to act by the European Parliament, the EC Council or the EC Commission, and proceedings by any natural or legal person complaining that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion, are subject to a time limit of two months from the expiry of a two-month time limit within which the institution concerned has been called upon to act and has failed to define its position².

No application for revision of a judgment of the court may be made after the lapse of ten years from the date of the judgment³.

No right is to be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure⁴.

Proceedings against the Community in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the event giving rise to them. The period of limitation is interrupted if proceedings are instituted before the court or if prior to such proceedings an application is made by the aggrieved party to the relevant Community institution⁵.

Like the English courts, the European Court of Justice does not raise the question of limitation on its own initiative; limitation must be pleaded by the defendant⁶.

1 See the EC Treaty art 230. Notwithstanding the expiry of that two month period, however, any party may, in proceedings in which a regulation adopted jointly by the European Parliament and the EC Council, or a regulation of the EC Council, of the EC Commission, or of the European Central Bank is at issue, plead the grounds specified in head (1) in the text in order to invoke before the Court of Justice the inapplicability of that regulation: see art 241.

Time does not run afresh when the EC institution in question merely confirms its original decision: Case C-250/90 *Control Union Gesellschaft für Warenkontrolle mbH v EC Commission* [1991] ECR I-3585, [1994] 2 CMLR 573, ECJ.

2 See the EC Treaty art 232.

3 See the Statute of the European Court of Justice art 44.

4 Statute of the European Court of Justice art 45.

5 See the Statute of the European Court of Justice art 46. In the latter event the proceedings must be instituted within the period of two months provided for in the EC Treaty art 230; the provisions of the second paragraph of art 232 apply where appropriate: Statute of the European Court of Justice art 46.

6 See Case C-20/88 *Roquette Frères SA v EC Commission* [1989] ECR 1553, [1991] 2 CMLR 6, ECJ; Case C-55/90 *Cato v EC Commission* [1992] ECR I-2533, [1992] 2 CMLR 459, ECJ.

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1241. Limitation periods applying in proceedings before the European Court of Human Rights.

The European Court of Human Rights may only deal with a matter after all domestic remedies have been exhausted¹, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken². No written observations or other documents may be filed with the court after the time limit set by the president of the chamber³ or the judge rapporteur⁴, as the case may be, in accordance with the rules of that court; and no written observations or other documents filed outside that time limit or contrary to any practice direction⁵ may be included in the case file unless the president of the chamber decides otherwise⁶. For the purposes of observing that time limit, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the court registry⁷.

1 As to the exhaustion of domestic remedies see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 173.

2 Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (as amended by Protocol No 11 (ETS No 155)) art 35(1).

3 'Chamber' means any chamber of seven judges constituted in pursuance of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (amended by Protocol No 11 (ETS No 155)) art 27(1), and the expression 'president of the chamber' means the judge presiding over such a chamber: ECtHR Rules of Court r 1(e).

4 'Judge rapporteur' means a judge appointed to carry out the tasks provided for in the ECtHR Rules of Court r 48 (reports on admissibility of inter-state applications) and r 49 (examination of individual applications): r 1(j).

5 Ie any practice direction issued under the ECtHR Rules of Court r 32.

6 ECtHR Rules of Court r 38(1).

7 ECtHR Rules of Court r 38(2).